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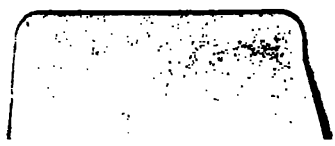

FULL REPORT,

EMBRACING ALL THE

EVIDENCE AND ARGUMENTS

IN THE CASE OF THE

MMONWEALTH OF VIRGINIA,

VS.

THOMAS RITCHIE, JR.

TRIED AT THE SPRING TERM OF THE CHESTERFIELD SUPERIOR COURT,

1846.

TO WHICH IS ADDED,

AN APPENDIX,

WING THE ACTION OF THE COURT IN RELATION TO THE OTHER PARTIES,

MESSRS. P. J. ARCHER, W. GREENHOW, AND WILLIAM SCOTT,

CONNECTED WITH THE SAID CASE.

NEW YORK:

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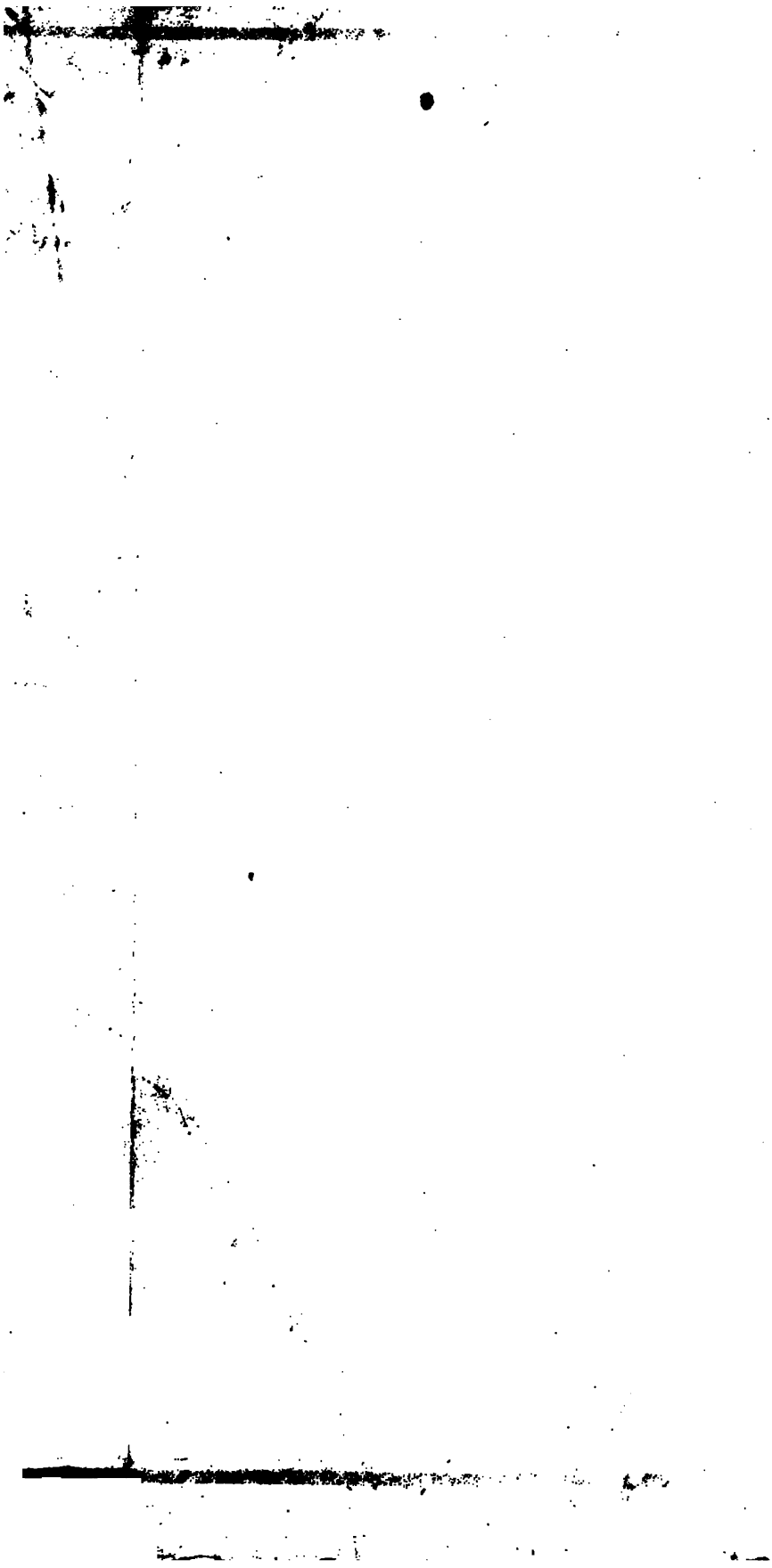

A

FULL REPORT,

EMBRACING ALL THE

EVIDENCE AND ARGUMENTS

IN THE CASE OF THE

COMMONWEALTH OF VIRGINIA

VS.

THOMAS RITCHIE, JR.

TRIED AT THE SPRING TERM OF THE CHESTERFIELD SUPERIOR COURT,

1846.

TO WHICH IS ADDED,

AN APPENDIX,

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NAMES OF THE COUNSEL.

RICHARD W. FLOURNOY, ESQ., *Prosecuting Attorney.*

ANDREW STEVENSON, ESQ.,
SAMUEL TAYLOR, ESQ.,
JOHN W. JONES, ESQ.,
WILLIAM M. OVERTON, ESQ., } *Counsel for Mr. Ritchie.*

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PREFACE.

In making a publication of the proceedings had at the recent Trial in Chesterfield, it is proper that the subjoined newspaper articles should also be given to the public, in order that they may see the circumstances which immediately preceded the rencontre between Messrs. Pleasants and Ritchie. The Report of the Trial is submitted to the public without comment. It is due, however, to say, that all the witnesses, (Mr. Triplett and Mr. Bowles, who were out of town, excepted,) and the counsel, have been afforded an opportunity of seeing what is here attributed to them, and of correcting any inaccuracies which may have occurred. It, is, therefore hoped that this publication will be received as an authentic account of a trial, in which some of the first men in Virginia appeared as counsel, and which was listened to from day to day by a large assemblage of spectators.

From the Richmond Republican.

The following is an extract from a letter published in the Richmond Enquirer of the 19th of January, and dated—

WASHINGTON CITY, January 16, 1846.

I am much mistaken if Mr. John Hampden Pleasants does not intend, with his new paper, to "out-Herod Herod"—to take the lead of the Intelligencer, if possible, in exciting Abolitionism, by shewing Southern Whigs sympathy in their movements; and thus, for the benefit of Whiggery, to cheat them into the belief, that the Southern patrons of either of these gentlemen are ceasing to detest their incendiary principles, and beginning, like the Whigs of the North, to coalesce with them. They agitate, to affect public opinion at the South; and Messrs. Gales and Pleasants practically tell them to go on—that they are succeeding to admiration. MACON.

From the Richmond Enquirer, Jan. 21st, 1846.

The pressure upon our columns is so great that we shall be compelled to print three country papers next week. We have on file favors from our correspondents sufficient to fill three Enquirers. As our own views upon the great questions which now agitate the public mind are so well known, we shall lay aside our pen, and for the present leave the field of discussion to the good sense and integrity of our party in Congress, hoping that all differences of opinion may be wisely settled, and that the slight cloud, which the Whigs expect to bring on a storm that shall overwhelm us, will be dissipated, and our party found united upon all questions. Many of these communications may not express our views entirely, but they come from those who have a right to be heard, and we shall publish them as we do the letters of our Washington correspondent, without intending to endorse all they may say, but merely for what they are worth.

From the News and Star of January 23.

A STATEMENT TO THE PUBLIC.

Acting for the time being as one of the Editors of the News and Star, preparatory to our proposed new arrangement, I shall be excused for bringing before the public, the subject involved in the following extract of a letter:—

CHESTNUT STREET, PHILADELPHIA, January 18th, 1846.

It is extensively, almost universally, believed in this city, that you are going to establish an Abolition Paper in Richmond, or such an one as Cassius M. Clay edited in Lexington, Kentucky. I have d—d this as a lie, every time I have had the chance, although I believe that you, like myself, a Virginian and slave owner, regard slavery as an evil. One week ago I was disposed to be more extreme, but since I have heard C. M. Clay, I have fallen back upon my old grounds, &c. &c. T. E. M.

I am obliged to the friend who has placed it distinctly in my power to meet a fabrication, which in the North, has been circulated for the purpose of *benefitting*, and here, in Virginia, has been circulated for the purpose of injuring me, and by those who should have known better, if they did not, or, *knowing better*, should have disdained to disseminate as editors, what they certainly must have known as men, was unfounded in fact.

I understand, for I have not seen it, that the Washington correspondent of the Enquirer of this city, has been pleased to say that I was an Abolitionist, and proposed to publish an abolition paper here. Who that correspondent is I do not know, and with such evidence before me of his mendacity, have no desire to know. The Enquirer itself has been accustomed, for years, to lash the lying propensities of a certain class of Washington letter-writers, who, paid by the line, and incompetent to speculate intelligently upon the affairs of the country, are accustomed to atone for their ignorance and flatness, and to deserve the *consideration paid* them, by retailing scandal and gossip at second hand. I feel neither surprised, nor injured, that one of his class should have misconceived my opinions, or misrepresented my objects; for, so that he pockets his penny a line,

what does he care whether truth is laid prostrate, or FALSEHOOD made triumphant? It is all the same to him. A vile mercenary, he is equally ready to write for Democratic or Whig, and to receive his wages from those who pay best.

But I confess my surprise, nay, my regret, that the present Editors of the Enquirer should, by publication, have endorsed, so far as that sort of endorsement can go, without any explanatory remark, the misrepresentations of their correspondent at Washington. They *ought* at least, as public men, to know that *I* stand upon exactly the same platform with their father, in respect to this subject. In 1832, we stood for once shoulder to shoulder, and since that time have both expressed, without intermission, qualification or difference, the same abhorrence of Northern abolition, and the same determination, under no circumstances which could be imagined, to submit, in the slightest degree, to its dictation or intrusion.

Those young gentlemen ought to know too, some other things, or if they know them already, they should not suffer the willingness to injure a party opponent, to prevail over their respect for *truth*, and the justice which every man owes to his fellow man.

These things are these:—

1. *Their father* and I, as I state above, occupied in 1832 and *since*, the same ground *exactly* in respect to, and in utter repudiation of, Northern Abolition.

2. In twenty years there can be found no word or thought of mine, that does not stamp the statement of their correspondent "Macon," with *unqualified falsehood*—that, in contradiction to his recent slander, does not prove him to be one of those lying Washington "scribblers," as the Enquirer so often called them, who sell the lowest gossip to public credulity at "a penny a line."

3. That, in 1832, *my* views in respect to slavery were identically the views not only of Mr. Thomas Ritchie, but of Dr. Brockenbrough, Wm. H. Roane, Thomas Jefferson Randolph, James McDowell, S. McD. Moore, Wm. B. Preston, G. W. Summers, Henry Berry, a decided majority of the Legislature and an immense *majority of the People*, of all political parties and all grand divisions.

4. That these also were the views—that namely, slavery was an evil, and ought to be got rid of, but at our own time, at our own motion, and in our own way—of Washington, Jefferson, Henry, George Mason, the two Lees, Madison, Monroe, Wirt, and *all* the early patriots, statesmen, and sages of Virginia, WITHOUT EXCEPTION.

Such are *my* opinions still, and if they constitute me an abolitionist, I can only say I would go farther to see some of the abolition leaders hanged, than any man in Virginia, especially since their defeat of Mr. Clay, and of them, especially Birney.

In respect to *slavery*, I take no pious, no fanatical view. I am not opposed to it because I think it morally wrong, for I know the multitude of slaves to be better off than the whites. I am against it for the *sake of the whites*, my own race. I see young and powerful commonwealths around us, with whom, while we carry the burthen of slavery, we can never contend in power, and yet with whom we must prepare to contend with equal arms, or consent to be their serfs and vassals—we or our children! In all, I look but to the glory and liberty of Virginia.

JOHN H. PLEASANTS.

From the Richmond Enquirer, January 24, 1846.

We devote the greater part of our paper to-day to the favors of correspondents, speech of Mr. Cobb of Georgia, and legislative and congressional proceedings. We have been so much occupied with unavoidable business, and the removal of our family to Washington, that we have had neither time or inclination to devote to the editorial columns of our paper to day. But there is one matter which seems to demand some notice at our hands, to which a friend has called our attention.

In the Star of yesterday, an article, signed J. H. Pleasants, appeared, based upon some remarks said to have been made by our Washington correspondent. Mr. P. has not seen the article, but understands that it charges him with an intention of starting an abolition paper. We would advise Mr. P. to look before he leaps—to examine the context before he turns commentator.

Our correspondent needs no defence from us, he is able to protect himself.

Although the language used by Mr. P. towards us may not be considered directly offensive, yet we are unwilling to allow him or others to make hypotheses in regard to our veracity. When we desire lectures on morals, we hope to be allowed to choose our own preceptor. We certainly shall not apply to him.

From the News and Star, January 26, 1846.

"MACON," &c.

The Enquirer of Saturday professes to contradict, without contradicting, the fact that the editors of that paper had silently endorsed the charge of their correspondent "Macon," at Washington, that I, (J. H. Pleasants,) had proposed to establish in this city an Abolition paper, (or in equivalent phrases.)

Who that correspondent is, I have no means of knowing; but this I do know, and again affirm, that the Editors of the Enquirer must have known the charge (thus understood) to be a libel of the grossest character, and that their publication of it, without commentary or explanation, was a violent wrong to me, an outrage on truth, as they must be convinced the truth was, and an injustice to all men entertaining my sentiments, uniformly expressed for twenty years, and never deviated from, inclusive of their own father, and many of the leading democrats of this State. The correspondent may have thought what he said, in ignorance of the facts, and may therefore be guiltless of premeditated injustice; but the Editors of the Enquirer, who endorse his calumny by printing it, without any explanation, either did know better, in which case their candor and liberality are compromised, or ought to have known better, in which case, they themselves may say what responsibility they incur by the circulation and endorsation in the dark, (quasi, at least,) of an accusation utterly false in fact, and calculated to infuse the greatest possible prejudice against him respecting whom it is promulgated.

It would have become those gentlemen, instead of a flippant retort, to have repaired the injustice they had done, by the publication of my vindication, and to remember that other people have rights—which too they mean to maintain down to the very crossing of a T, when they perceive a disposition to violate them—that other people had rights besides those who flourish under the smiles of James K. Polk. We certainly do not mean to

infringe the rules of courtesy, in desiring that this fact shall be distinctly remembered by others, never meaning ourselves to forget it.

We shall *never* be outdone in courtesy and liberality, if we only know how to meet generous feelings in a correspondent spirit; but unquestionably we shall never submit to injustice or misrepresentation.

From the Richmond Enquirer, January 27, 1846.

We notice in the Star of yesterday, an article professedly in reply to a brief comment made by us on a former piece in that paper signed, "J. H. Pleasants." He takes us to task for publishing the predications of our correspondent, and says we ought to know that they are false. We know what some of his past opinions have been, but it is scarcely possibly for us to divine what his sentiments may hereafter be. We have not the power of *clairvoyance*, and consequently cannot tell in advance what principles he may be disposed to advocate. We doubt whether he knows himself. His most intimate friends are sometimes puzzled to understand his position.

The article referred to is, in reality, a somewhat violent, though rather inconsistent, attack upon us and our correspondent, "Macon." We do not care to engage in a controversy of this kind; enough has occurred in former ones, between Mr. J. H. P. and ourselves, to show the utter futility of an attempt to bring them to a final decision. If our correspondent "Macon" wishes it, he will of course have the use of our columns, but, if "Macon" will take our advice, he will let Mr. J. H. P. alone. To use an old proverb, "give the gentleman rope enough, and he will *hang himself*."

From the News and Star, January 28, 1846.

THE RICHMOND ENQUIRER

Is informed that Mr. Pleasants left on yesterday morning for the North. He has had no opportunity therefore of seeing the article in that paper of yesterday. On his return, or before, he will doubtless give it such notice as may seem to him, under the circumstances, befitting.

From the News and Star, February 11, 1846.

THE RICHMOND ENQUIRER OF JAN. 27TH.

In consequence of the absence of J. H. Pleasants at the North, for a fortnight, his notice of an article, in the Enquirer of the above date, has been deferred. Prepared for yesterday and to-day, it has been unavoidably postponed, by the very important intelligence from the seat of the Federal Government.

From the News and Star, February 16, 1846.

The publication of the following letter has been delayed, by circumstances with which it is not necessary to trouble the public:—

TO CHARLES MAURICE SMITH, ESQ.

PHILADELPHIA, February 4, 1846.

Dear Friend:—Your letter of the 27th ultimo, accompanied by the Enquirer of the same date, duly reached me here, and I should have replied to you and it at an earlier day, but that I have been engaged in matters of consequence, which closely occupied my time and efforts. Your friendship I knew would consent to wait, and its impertinence could be noticed as it deserved, when I was more at leisure. The number of the Enquirer you transmit me, and which, in the spirit of its remarks, you justly deem exceptionable, was issued the morning I left Richmond. I, therefore, had no opportunity of seeing or replying to it sooner, even had it been of consequence enough to arrest me in the execution of the important business which carried me to the North.

There is one circumstance which embarrasses me in the reply which I propose to make to that article. It is that, as I have reason to know the elder of the two brothers, who now conduct the Richmond Enquirer, was in the city of Washington when it was prepared and published. He knew nothing of it, and I would fain hope, as I verily believe, that his better taste and more liberalized understanding would have altogether disapproved its vulgarity and injustice. His sense of honor would have restrained him from offering wanton and gratuitous insult, and his delicacy and chivalry from adverting to a past transaction, amicably composed by mutual friends, holding his honor and mine for the time in their custody, and whose own honor was pledged that neither his or mine had suffered, or could suffer, by the composition. I am sensible of the extreme delicacy of the ground upon which I tread; but that gentleman, I trust will understand that my motive is to avoid injustice, not to escape responsibility.

I quote the article of the Enquirer, that the public may the better comprehend the justness of my complaint, and the illiberality of its course. I have been charged directly, or inferentially, by its anonymous correspondent, at Washington, with being *an Abolitionist*, and proposing to publish an Abolition paper at Richmond. Than this charge, plainly made to injure me personally, and gratify the malevolence of a rancorous party feeling, nothing in the nature of things could be more false or strongly contradicted by the unvarying testimony of thirteen years, comprehending the whole period of the existence of the Abolitionists, as an organized party, during which long tract of years, and as Editor of the Richmond Whig, without variableness or shadow of turning, I vehemently combatted that pernicious sect as fanatics in their views, as exceeding scripture, as intrusive and insulting to our rights and sovereignty, as the worst enemies of the slave himself, and as defeating necessarily all the objects which they professed to have at heart. Well informed, as I have good reason to be, of the baseness of party spirit, and its readiness to achieve the worst ends by the vilest means, I yet had no conception that, in the face of the consistent public evidence of thirteen years, any man would have the hardihood, so little regard for justice, and so little respect for truth, as to hold me up by charge or inuendo, *as a favorer of Abolition*, having been from its origin, precisely the man in Virginia who most deprecated its pestilential effects, and had most exerted himself, privately and editorially, to exterminate it.

I published in this paper a remonstrance to to that effect, setting forth the facts, stating what my true opinions were, and that I stood where the past generation had stood before me, headed by Washington, Jefferson, Marshall, Pendleton, Wythe, the two Lees, Madison, Monroe, and every man of distinction, (so far as my knowledge goes) without exception, and very many of the distinguished men of both parties of our day, including the father of the present Editors of the

Enquirer themselves:—That ground was, that the eradication of slavery for the sake of *the whites*, but not of the blacks, would be a desirable event, if it could be accomplished with justice to the owner; but that it must be done without extraneous interference from any quarter or dictation, at our own good will and pleasure, at our own instance, at our own time, and in our own way.

One, any liberal mind, would have imagined, that after giving currency to so unjust an imputation and so foul and injurious a libel upon a fellow-citizen, that the Editors of the Enquirer would have hastened to correct it, (or have allowed me to correct it,) the moment they were satisfied, as they could not but be satisfied of its utter and singular falsity. But in place of doing this, and republishing the vindicatory statement I had published they passed it on with some flippant remark which I do not now remember, but which showed as much callous insensibility to the injustice they had perpetrated, as execrable taste. Complaining of the injustice of this course, the *Junior* of the Enquirer thus replies in the No. of January 27:—

"We notice in the Star of yesterday, an article professedly in reply to a brief comment made by us on a former piece in that paper signed 'J. H. Pleasants.' He takes us to task for publishing the prediction of our correspondent, and says we ought to know that they are false. We know what some of his past opinions have been, but it is scarcely possible for us to divine what his sentiments may hereafter be. We have not the power of *clairvoyance*, and consequently cannot tell in advance what principle he may be disposed to advocate. We doubt whether he knows himself. His most intimate friends are sometimes puzzled to understand his position.

"The article referred to is, in reality a somewhat violent, though inconsistent, attack upon us and our correspondent 'Macon.' We do not care to engage in a controversy of this kind; enough has occurred in former ones between Mr. J. H. P. and ourselves to show the utter futility of any attempt to bring them to a final decision. If our correspondent 'Macon' wishes it, he will of course have the use of our columns, but, if 'Macon' will take our advice, he will let Mr. J. H. P. alone To use an old proverb, 'give the gentleman rope enough' and he will *hang himself*."

On this Card I propose, in conclusion, to say a few words, although I am convinced in my own heart that it is utterly undeserving of the slightest attention in any sense, yielding herein rather to the opinions of others than to my own convictions.

Justice from the Richmond Enquirer I have long ago ceased to expect or desire. For more than twenty years, from early manhood to the confines of age, I have lived under its ceaseless misrepresentations and malevolent misconstruction. I had hoped, when the former Editor of that paper removed to Washington, to receive the rich rewards of his devotion to party, to live upon better terms with his successors, and I have studied to cultivate better relations, by respectful consideration, and undeviating courtesy:—but I have found that other passions besides the love of liberty are transmitted from "sire to son!"

My opinions, less than those of any man ever connected with the public press of Virginia, have *never* been concealed: nor has my position ever been doubtful on any public matter. No friend, and far more than even a friend, *no enemy*, has ever been at a loss to understand "my position." I carry it ever on my sleeve, disdaining trick and contemning subterfuge, as unworthy of truth and freedom. I am to be *found* always, by friends, but more easily still by foes. He who sacrifices truth to scurrility would not hesitate at falsehood upon more important occasions than the present.

The allusions to a former controversy between myself and those who now conduct the Enquirer, is of so gross and indelicate a character, that it must revolt the taste and the honorable feelings of the whole community. A controversy occurred and was proceeding to extremities. Gentlemen of distinction, mutual friends, (Gen. Pegram, now dead, and Mr. Lyons) interposed their good offices, and arrested the matter—I insisting, as a *sine qua non*, that reparation was to be made me by the retraction of offensive expressions. This was done, and done upon the guarantee of Messrs. Lyons and Pegram, and the pledge of their honor that the terms of adjustment were strictly and equally honorable to all parties, they standing, of course sponsors to the world for the honorable nature of the stipulations they had imposed, and which were accepted upon their persuasion and the authority of their reputation.

To drag this matter upon the stage, after the lapse of three years, thus occurring, thus arbitrated by mutual and distinguished friends, thus amicably composed, as was admitted, to the mutual honor of the two parties, is a most unparalleled instance of disregard to the first dictates of honor, and the first rudiments of civilization and delicacy. I do not feel, however, the attack to be made upon me, but upon the honor of Gen. Pegram and Mr. James Lyons. The former has gone where no misconstruction can avail—"his record is on high." The latter is still here, and, though no friend of mine, prepared, I am convinced, as a man of honor, to brand this statement with falsehood, and him who makes it as a calumniator.

Calmly reviewing this piece of impertinence—and it has never excited any emotion but that of contempt—I should be of opinion that this assailant meditated *fight*, if I could think that a young *brave* would seek through preference, as an antagonist upon whom to "flesh his maiden sword," a man so much older than himself as I am, and with dependent children. This opinion, justice to *him* seems to enforce. But it is farther confirmed by his own conduct in former instances: In "Il Secretario" he had a foe illustrious for his virtues and talents, whom to have pinked would have redounded to the warlike fame he seems emulous of possessing: "Il Secretario," too, then expecting this gallant encounter. But I have not heard that this aspirant after knighthood availed himself of so good an opportunity for winning his spurs. *Battle*, then, being clearly not his object, I must suppose that he meant no more than a little gasconade, and the recovery, at a cheap rate, of a forfeited reputation for courage.

But I quit a theme which I ought, I am conscious, to have regarded as scarcely worthy of the pains of writing this, or of the public attention. Truly yours,

JOHN H. PLEASANTS.

From the Richmond Enquirer, February 17, 1846.

We perceive in the Richmond Star of yesterday, a letter from Mr. John H. Pleasants to Chas.

Maurice Smith, Esq., one of its Editors, dated Philadelphia, February 4th, 1846. The letter is in reply to an editorial in the Richmond Enquirer of January 27th. The Junior Editor of the Enquirer had charge of the paper at that time. He is not now in Richmond, but, it is proper to state did not leave the city until some days after Mr. Pleasants returned to it. Whether upon his return he will deem it necessary to reply to Mr. Plessants' letter it is for himself to say. From his editorial of the 27th January, we should judge that he will only consider Mr. Pleasants' letter as still stronger proof of his own opinion expressed in that editorial. With that, however, we, the Senior Editor, do not feel ourself at liberty to interfere.

As Mr. Pleasants, however, has brought into notice an affair which occurred between the Senior Editor and himself, and endeavors to use it as a weapon of assault against the Junior Editor, lest our silence may be misconstrued, we beg leave to say a few words on the subject.

In the first place, we do not consider that the Junior Editor is responsible for "dragging this matter upon the stage;" but that to Mr. Pleasants himself the fault, if fault there be, is to be attributed. The remark on which Mr. Pleasants founds his charge, is this: The Junior Editor, declining to engage in a personal newspaper controversy with Mr. Pleasants, says, "Enough has occurred in former ones between J. H. Pleasants and ourselves, to show the utter futility of any attempt to bring them to a final decision." That such language as this should provoke resentment, is natural enough; but it does not seem to us, that it casts any reflection on the gentlemen alluded to by Mr. Pleasants, as having mediated in a difficulty between the Senior Editor of the Enquirer and that gentleman; and moreover, we do not consider that, by any just inference, it can be deduced, that that difficulty between us and Mr. Pleasants is particularly referred to. So much in justice to the Junior Editor.

For ourself, without for a moment consenting to be a party in "dragging upon the stage" any affair of our own, it is our duty to say, that Mr. Pleasants' letter contains in relation to the affair which he has thought proper to bring forward, both suppositions and deductions, which do not receive our assent.

From the Richmond Enquirer, February 21st, 1846.

We, the Junior Editor, returned to the city on Thursday night. We have seen a letter addressed by J. H. Pleasants to Charles Maurice Smith, Esq., dated at Philadelphia, February 4, and published February 16th, in answer to an article which appeared in the Enquirer on the 27th of January. This letter affords strong corroborative evidence of our opinion expressed in our article of the 27th ultimo, and, from J. H. Pleasants' communication, evidently understood by him to the extent we intended: namely, that facts within our knowledge proved him to be a coward.

He appeals to the "confines of age and dependent children" as an excuse. Let it be—we shall not disturb him.

IN THE CIRCUIT SUPERIOR COURT OF CHESTERFIELD,
JUDGE JOHN B. CLOPTON, PRESIDING.

THE COMMONWEALTH

vs.

THOMAS RITCHIE, JR.

MARCH 31st, 1846.

This cause was called up for trial, and after some preliminary remarks between the counsel, the panel of twelve jurors was completed.

Before the jury were sworn, it being observed that there were justices of the peace among the number drawn from the hat, the Prosecuting Attorney suggested that they be set aside and others substituted, as he thought it would make no difference to the accused.

Mr. Jones, in behalf of the accused, objected, and in doing so, passed an eulogium upon the intelligence of the magistrates of Virginia.

The Court decided that there was no legal disqualification to prevent justices of the peace from serving upon juries.

The following jurors were then sworn:

James H. Bass,	Wm. Andrews,
Thomas Gregory, jr.	Richard Goode,
Edmund Wilkinson,	Thomas Gibbs,
Samuel Cheatham,	Wm. Wilkinson,
Littlebury Marsh,	John M. Perkins,
John Perry,	Daniel McLaurin.

The indictment was then read, as follows:

Virginia, fourth Judicial District.
Seventh Circuit.

CHESTERFIELD COUNTY, to wit.

The Jurors for the Commonwealth of Virginia, duly summoned to attend the Circuit Superior Court of Law and Chancery for the said County of Chesterfield, held according to law on the 25th and adjourned to the 26th day of March, in the year one thousand eighty-hundred and forty-six, upon their oath present—That Thomas Ritchie, jr., late of the City of Richmond in the State of Virginia, on the 25th day of February in the year one thousand eight hundred and forty-six, at the County aforesaid, near the town of Manchester, and within the jurisdiction of the said Circuit Superior Court, in and upon the body of John H. Pleasants, feloniously, wilfully, deliberately, premeditatedly, and of his malice, aforethought did make an assault, and that the said Thomas Ritchie, jr., fired several pistols, then and there charged with gunpowder and leaden bullets, which said pistols he the said Thos. Ritchie jr., in his right hand then and there successively had and held, then and there feloniously, wilfully, premeditatedly, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said John H. Pleasants; and that the said Thos. Ritchie, jr., with the leaden bullets aforesaid out of the pistols aforesaid, then and there by the force of the gunpowder aforesaid by the said Thomas Ritchie, jr., discharged and shot off as aforesaid, then and there feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did strike, penetrate and wound the said John H. Pleasants, in and upon the left side of the chest near the shoulder, the left arm just above the elbow, the left hand, the scrotum and the nates of the left side, of him the said J. H. Pleasants, giving to him the said J. H. Pleasants then and there, with the leaden bullets aforesaid, so as aforesaid discharged and shot out of the pistols aforesaid, in and upon the left side of the chest near the shoulder, the left arm just above the elbow, the left hand, the scrotum, and the nates of the left side of him the said John H. Pleasants, sundry mortal wounds, of which mortal wounds the said John H. Pleasants, on and from the said 25th day of February in the year one thousand eight hundred and forty-six, until the 27th day of February in the year one thousand eight hundred and forty six, languished and languishing did live, on which said 27th day of February in the year one thousand eight hundred forty-six, at the city of Richmond, in the State of Virginia aforesaid, he the said J. H. Pleasants, of the mortal wounds aforesaid died. And so the jurors aforesaid upon their oath aforesaid, do say, that he the said Thos. Ritchie, Jr., him the said J. H. Pleasants, in the manner and by the means aforesaid, feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought, did kill and murder, contrary to the form of the Act of the General Assembly in that case made and provided, and against the peace and dignity of this Commonwealth.

And the jurors aforesaid, upon their oaths afore-

said, do further present that the said Thomas Ritchie, jr., on the 25th day of February in the year one thousand eight hundred and forty-six at the said County of Chesterfield near the town of Manchester, and within the jurisdiction of this Court, feloniously, wilfully, maliciously, and by previous agreement, did fight a duel or single combat with the said J. H. Pleasants, with sundry weapons, to wit: four duelling pistols, one six-barrelled revolving pistol charged with gunpowder and leaden bullets, and one cutlass, the probable consequence of which might be the death of the said J. H. Pleasants, and that the said Thos. Ritchie, jr., then and there, in and upon the body of the said J. H. Pleasants, feloniously wilfully, maliciously, deliberately, premeditatedly, and of his malice aforethought, did make an assault, and that the said Thos. Ritchie, jr., the said pistols, charged with gunpowder and leaden bullets as aforesaid, which said pistols he the said Thomas Ritchie, jr., in his right hand then and there successively had and held, then and there and of his malice aforethought, did discharge and shoot off, to, against and upon the said John L. Pleasants; and that the said Thomas Ritchie, jr., with the leaden bullets aforesaid, out of the pistols aforesaid, by force of the gunpowder aforesaid, then and there shot off and discharged as aforesaid, by the said Thomas Ritchie jr., then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did strike, penetrate and wound the said Jno. H. Pleasants, in and upon the left side of the chest near the shoulder, the left arm just above the elbow, the left hand, the scrotum and the nates of the left side, of him the said John H. Pleasants, giving to him the said John H. Pleasants, then and there with the leaden bullets aforesaid, by the said Thos. Ritchie, jr., was aforesaid discharged and shot out of the pistols aforesaid, in and upon the left side of the chest near the shoulders, the left arm just above the elbow, the left hand, the scrotum and the nates of the left side of him the said John H. Pleasants, sundry mortal wounds, of which mortal wounds the said John H. Pleasants, on and from the said 25th day of February in the year one thousand eight hundred and forty-six. until the 27th day of February in the same languished and languishing did live, on which 27th day of February in the year one thousand eight hundred and forty-six at the City of Richmond, in the State of Virginia, the said John H. Peasants, of the mortal wounds aforesaid, died.

And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Thomas Ritchie, jr., him the said John H. Pleasants, in the manner and by the means aforesaid, feloniously wilfully, deliberately premediatedly, and of his malice aforethought, did kill and murder, against the form of the Act of General Assembly in that case made and provided, and against the peace and dignity of the Commonwealth.

Endorsed—"A true bill

A. H. BRANCH, *Foreman.*"

A copy—Teste, P. POINDEXTER, *Clerk*

The witnesses for the commonwealth were called and sworn.

THOMAS J. DEANE, *Examined.*

Mr. Flournoy.—State all you know, Mr. Deane, with respect to the charge against the prisoner.

Mr. Deane.—Some time during the day, on Tuesday, the day before the affair, I went to see Mr. Pleasants, on business. He informed me of a message which he intended to send to Mr. Ritchie. He embraced two other gentlemen in that message. He asked me what I thought of it. I told him I thought he had no right to embrace two other gentlemen in it. Little more was said by Mr. Pleasants, except that his friends had advised him, and he had determined to act upon his own opinion.

Mr. Stevenson.—Repeat the last sentence.

Mr. Deane repeated it, and proceeded with his evidence. About 3 o'clock on the same day, as I was going to dinner, I was called upon by Mr. Archer, who took me to the place where Mr. Greenhow and Mr. Ritchie were standing, and delivered to Mr. Ritchie the message which I have seen published in the papers. The purport of this message was, that Mr. Pleasants would be on the Manchester side of James' River, 200 yards above the cotton factory, on the next morning at sunrise, armed with side arms, rifles, muskets and guns excluded, and with two friends similarly armed.

Mr. Flournoy.—At sunrise?

Mr. Deane.—Yes.

Mr. Flournoy.—200 yards above the factory?

Mr. Deane.—About 200 yards. I do not recollect the precise words.

Mr. Flournoy.—Rifles, muskets, and shotguns excluded?

Mr. Deane.—Yes.

Mr. Flournoy.—Did Mr. Ritchie give any answer to Mr. Pleasants' message, in your presence?

Mr. Deane.—No, he did not. Sometime during the evening, Mr. Greenhow called at my room (I think it was about 6 o'clock,) to see Mr. Archer. He was not in. Mr. Greenhow asked me to go upon the ground as a mutual friend. I declined to do so; I asked him if the matter could not be adjusted. I asked if Mr. Ritchie would not be willing to withdraw the epithet of "coward" applied to Mr. Pleasants, in case Mr. P. should come upon the field. His reply was, that Mr. Ritchie conscientiously believed Mr. Pleasants to be a coward. Mr. Greenhow went off, and I did not see him until the next morning. I did not know till after 10 o'clock that the parties were to meet.

[Here some repetition was made by Mr. Deane, at the request of Mr. Stevenson.]

Mr. Flournoy.—I understood you to say that you said nothing after Mr. Greenhow's answer, and that he left your room?

Mr. Deane.—Yes. I heard nothing more about the affair, until after 10 o'clock. I left my room before 8 o'clock. About 12 o'clock I was sent for to go over, by one of Mr. Pleasants' friends, and take the place of a gentleman who was sick. I declined. I was then asked to go as a mutual friend; which I also declined.

Mr. Flournoy.—You were then applied to; to

go not as a particular friend, but as a mutual friend.

Mr. Deane.—Yes; and I declined, assigning as a reason, that I had refused Mr. Greenhow. I then asked one or two of Mr. Pleasants' friends whom I saw there, if they would go.

Mr. Flournoy.—Where?

Mr. Deane.—Where I was—at Mr. Lyons', at a late hour of the night, at a party.

Mr. Flournoy.—Did you not conclude to go?

Mr. Deane.—Yes, I finally did. As I was coming out, I met Dr. Warner. I asked him to go as the friend of Mr. Pleasants; he declined; I then asked him to go as a surgeon, since he might be useful.

Mr. Taylor.—Was that when you were coming out of Mr. Pleasants' room?

Mr. Deane.—No; when I was coming out of Mr. Lyons'.

Mr. Flournoy.—Dr. Warner declined to go except as a surgeon?

Mr. Deane.—Yes.

Mr. Flournoy.—Did you go?

Mr. Deane.—Yes. The next morning I went, and found all the parties upon the ground.

Mr. Stevenson.—Who were they?

Mr. Deane.—They were Messrs. Greenhow, Scott, Archer, Ritchie and Pleasants.

Mr. Flournoy.—What took place?

Mr. Deane.—As I approached, I met Mr. Archer. He told me that as Mr. Pleasants had only one friend, they had consented to withdraw one of theirs, and that he had made a proposition to them which they were then considering. I approached the place where Mr. Ritchie, Mr. Greenhow and Mr. Scott were standing, and proposed to Mr. Greenhow the object of my coming there; at which he expressed himself pleased. I then renewed the application I made the evening before, telling him that Mr. Pleasants was on the field, and asking him if he would not withdraw the imputation of cowardice. He replied that he would keep his friend there fifteen minutes and no longer.

A Juror.—Who said that?

Mr. Deane.—Mr. Greenhow. I suggested the propriety of moving higher up, as they were in the way of the cotton factory. Mr. Greenhow replied that the ground had been measured, and he would not go any farther.

Mr. Flournoy.—Where were they standing?

Mr. Deane.—Just above a large oak tree. Mr. Scott had a cloak on.

[Mr. Stevenson here presented a plan of the ground, as surveyed by Mr. Radziminski, an engineer. Mr. Deane examined it, and related the position of the several parties.]

Examination resumed.—

Mr. Flournoy.—On which side of the tree was Mr. Scott standing?

Mr. Deane.—On the lower side, next to the cotton factory. I then left him. As soon as I went up and told what was done, the combat commenced. Dr. Warner and I were standing together near the foot-bridge, over the canal, next to the river; more than 100 yards above Mr. Pleasants.

Mr. Flournoy.—Describe what occurred.

Mr. Deane.—Mr. Pleasants advanced down the road. When he had passed down between Mr. Greenhow and Mr. Archer. Dr. Warner remarked to me that there was an interruption. We heard Mr. Greenhow or Mr. Archer calling to Mr. Pleasants to stop. We called to him also. He said afterwards that it was too late.

Mr. Taylor.—That is not evidence.

Mr. Deane, resuming.—Mr. Pleasants, in going down, passed between Mr. Greenhow and Mr. Archer.

Mr. Jones.—How far below the bridge when Mr. Pleasants passed them?

Mr. Deane.—I think it was about 50 yards.

Mr. Flournoy.—Had any shots been discharged, when you called to Mr. Pleasants to stop?

Mr. Deane.—No; the call was made before either party fired.

Mr. Flournoy.—Did Mr. Pleasants stop?

Mr. Deane.—No; he proceeded to the attack.

Mr. Flournoy.—How far was he from Mr. Ritchie at the time of the interruption you speak of?

Mr. Deane.—I do not know; we were behind him; I suppose, however, about 50 yards.

Mr. Stevenson.—What happened?

Mr. Deane.—Mr. Ritchie fired the first pistol.

Mr. Flournoy.—About fifty yards from Mr. Pleasants?

Mr. Deane.—Yes. Mr. Pleasants continued to advance upon Mr. Ritchie till near him, when he fired, as I supposed his first pistol a few feet from him.

Mr. Flournoy.—Mr. Ritchie fired several times before that?

Mr. Deane.—Yes; but I do not know how many times.

Mr. Flournoy.—Did you and Dr. Warner still remain at the place where you first stood?

Mr. Deane.—When Mr. Pleasants fired the shot to which I refer, we started to run up, thinking that he would kill Mr. Ritchie. When near, we saw Mr. Pleasants strike Mr. Ritchie, with something, several blows.

Mr Flournoy.—You say with something?

Mr. Deane.—Yes: I think with a pistol.

Mr. Flournoy.—Did he have anything else with which to strike him?

Mr. Deane.—Yes; he had a sword-cane when he left me and went down the road.

Mr. Flournoy.—Was there any more firing?

Mr. Deane.—Mr. Ritchie fired, I think, a revolver about that time.

Mr. Flournoy.—They were in contact, or nearly so?

Mr. Deane.—Yes: they were touching, or nearly so, and there were several shots in quick succession.

Mr. Flournoy.—Did you get there before the firing ceased?

Mr. Deane.—No. Mr. Pleasants had fallen when I got up to where he was.

Mr. Flournoy.—What occurrred then?

Mr. Deane.—The parties all dispersed—Mr. Ritchie went away—Mr. P. went to the Toll House, escorted by Mr. Archer and myself—he was taken from there in a hack.

Mr. Flournoy.—You say Mr. Ritchie and his friends went off immediately?

Mr. Deane.—Yes.

Mr. Flournoy.—How?

Mr. Deane.—In a hack or a carriage, I believe.

Mr. Flournoy.—What arms had Mr. R.?

Mr. Deane.—I did not notice them particularly—I saw he was armed.

Mr. Flournoy.—Do you recollect any particular weapons?

Mr. D.—Only his pistols. I do not recollect what kind they were. He had a belt.

Mr. F.—Did you see a revolver?

Mr. D.—No, I did not see it.

Mr. F.—Had he a sword?

Mr. D.—I did not see it till afterwards.

Mr. F.—Did Mr. R. have his hand on his sword?

Mr. D.—He was holding it with the hilt upward.

Mr. F.—What arms had Mr. P.?

Mr. D.—A revolver, a duelling pistol, a bowie knife, and a sword-cane.

M. F.—How many barrels has a revolver?

Mr. D.—I do not know.

Mr. F.—How did he carry his revolver?

Mr. D.—In his coat-pocket.

Mr. F.—Did he draw it?

Mr. D.—No. It was taken out afterwards and not fired.

Mr. Stevenson.—Where was his sword-cane?

Mr. D.—Under his arm—his right arm or his left arm.

Mr. F.—Did he draw his bowie knife?

Mr. D.—No.

Mr. F.—How may shots did you hear?

Mr. D.—I did not count them.

Mr. F.—As near as you recollect, how many? Two or three?

Mr. D.—Two or three passed me.

Mr. F.—Were there as many as eight or ten?

Mr. D.—I cannot say; I did not pretend to count them.

Mr. F.—Was it your impression that Mr. P. fired only one?

Mr. D.—Yes.

Mr. F.—And that very near Mr. R.?

Mr. D.—Yes, I think I so remarked to Dr. Warner. I believe he struck at him with a pistol.

Mr. F.—Did Mr. P. die in consequence of his wounds?—and when did he die?

Mr. D.—About 2 o'clock on Friday morning.

Mr. Taylor.—Were you present, Mr. D.?

Mr. D.—No.

Mr. Taylor.—Of course, then, Mr. D. is not a witness of that.

Mr. F.—I understand you to say that during the combat Mr. P. occupied ground higher up the canal, and nearer the factory?

Mr. D.—Yes.

Mr. F.—I understand you to say that Mr. R. and Mr. Greenhow were near the oak trees?

Mr. D.—Yes.

Mr. F.—Did they remain there?

Mr. D.—Mr. Greenhow left and went where Mr. Archer was—Mr. P. had got beyond Greenhow and Archer when he was called on to stop. He would have been stopped but for that the firing commenced soon after we called on him to stop.

Mr. F.—Was he walking fast or slow?

Mr. D.—He was walking deliberately—in his usual walk.

Mr. F.—Was P's face turned down the canal?

Mr. D.—Yes? His face was towards Mr. R. At one time it seemed as if Mr. R. had gone over toward the canal on the river side. P. and R. were standing in rather an oblique position. (Here Mr. D. described their position on the chart.)

Mr. Taylor.—How far below the tree did Mr. P. fall?

Mr. D.—Before falling, I think he had advanced somewhat below the tree.

Mr. F.—How near was the oak tree to the canal bank?

Mr. D.—It comes out of the canal bank.

Mr. Taylor.—Is there any earth between the tree and the canal—on which a man can stand?

Mr. D.—Not that I know. The water washes the roots of the tree.

Mr. F.—Were all the parties there when you arrived?

Mr. D.—Yes.

Mr. Stevenson.—Did you not know that Mr. Scott had taken the place of Mr. Greenhow then?

Mr. D.—No sir.

Cross-examined.

Mr. Jones.—At the time of the conversation about withdrawing the charge of cowardice, was Mr. R. present?

Mr. D.—No, sir. Greenhow and Archer were present.

Mr. Jones.—Mr. P's message was that he would be 200 yards from the cotton factory?

Mr. D.—Yes.

Mr. J.—To that Mr. R. made no reply?

Mr. D.—None that I know of.

Mr. J.—How near did P. pass to R. in going to take his position?

Mr. D.—I do not know. My back was to him.

Mr. J.—Was any assault made by Mr. R. on Mr. P. as he passed?

Mr. D.—No.

Mr. J.—He stood still?

Mr. D.—Yes.

Mr. J.—He crossed the bridge and armed himself?

Mr. D.—His pistols were carried to him in a case. He threw off his cloak and armed himself.

Mr. J.—When Mr. P. armed himself, was he in view of Mr. R?

Mr. D.—Yes. Mr. R. saw him arm.

Mr. J.—What weapons did he arm himself with?

Mr. D.—Two pistols.

Mr. J.—At what distance was P. from Greenhow and Archer when called on to stop?

Mr. D.—I could not tell. About 15 or 20 yards.

Mr. J.—Did they call in a loud voice?

Mr. D.—Yes. So loud that I reckon it was heard at the cotton factory.

Mr. J.—Did Mr. P. stop?

Mr. D.—No.

Mr. J.—How did Mr. A. hold his pistols?

[Mr. D. described the manner.]

Mr. J.—What other weapon was visible?

Mr. D.—His sword-cane. He had a bowie knife in his bosom which was not visible, but was taken out afterwards.

Mr. J.—I understand you to say, that when you started to go up, they were within a few feet of each other?

Mr. D.—Yes. I had to go about 150 yards.

Mr. J.—Had they ceased firing when you reached them?

Mr. D.—Yes. Mr. P. had fallen. Mr. R. and party went off.

Mr. J.—From the time P. staggered, was any blow inflicted by Mr. R.?

Mr. D.—No. I saw no blow from Mr. R. after he fired his last pistol.

Mr. J.—Did Mr. P. have a revolver?

Mr. D.—Yes.

Mr. Stevenson.—How far were you from Mr. P. when he armed himself?

Mr. D.—I was near by.

Mr. Taylor.—What was the condition of Mr. P's sword-cane?

Mr. D.—It was bent and lying on the ground.

Mr. Taylor.—Much bent?

Mr. D.—A good deal.

Mr. Taylor.—Was the sword out of the cane?

Mr. D.—I think so. I was holding P.'s hand for Dr. Warner to do something to it.

Mr. Taylor.—Were you near enough to see what use Mr. R. made of his sword?

Mr. D.—I thought Mr. R. made no use of his sword. He may have parried Mr. P.'s blows with it.

Mr. Taylor.—What use did Mr. P. make of his sword?

Mr. D.—I do not know.

Mr. Taylor.—Can you account for its bent condition?

Mr. D.—No.

Mr. Taylor.—Is there any other way of accounting for its being bent, except its being bent by Mr. R.'s sword?

Mr. D.—I think the bending may have come from a thrust made by Mr. P.

Mr. Taylor.—Was there any mark on Mr. P. made by R.'s sword?

Mr. D.—No, sir.

Mr. Taylor.—Was it not in the power of Mr. R. to run him through?

Mr. D.—Yes.—P. was falling, I looked at Mr. R., and he made no effort to do so. I could see from his manner that he did not intend it.

Mr. Taylor.—Did you see any effort on the part of Mr. R. to strike him?

Mr. D.—No, sir.

Mr. Taylor.—You say that it was difficult to form an opinion of the distance between the parties when the combat commenced?

Mr. Deane.—I do not know what the distance was. I think fifty yards, more or less. I was looking at Mr. Pleasants, without regard to Mr. Ritchie's position.

Mr. Taylor.—You say that you were enabled to see that they were near together when Mr. Pleasants fired what you supposed his first pistol?

Mr. Deane.—Yes, they seemed near. Almost touching.

Mr. Taylor.—Was not Mr. P. nearly in a line between you and Mr. R?

Mr. Deane.—I don't know.

Mr. Stevenson.—Who fired first?

Mr. Deane.—Mr. Ritchie fired first.

Mr. Stevenson.—Did you tell by the flash of the pistol?

Mr. Deane.—No sir; I told by something more distinct than that: the ball passed near me.

Mr. Taylor.—I understand you to say you are not able to tell at what time Mr. P. fired his first pistol?

Mr. Deane.—No. I do not know of Mr. Pleasants firing but one.

Mr. Flournoy.—I understand you to say that the ball from the first fire passed near you?

Mr. Deane.—Yes. Mr. Ritchie's face was toward me.

Mr. Flournoy.—I understand you to say that on the ground you renewed the application to have the epithet of "coward" withdrawn?

Mr. Deane.—Yes. Mr. Greenhow's answer was, that he would keep his friend on the field fifteen minutes, and no longer. In reply to the proposition that they should go higher up, they said the ground had been measured. It was not said by whom it was measured.

Mr. Taylor.—Did you here Mr. P. say in passing up the canal, "Not here, higher up."

Mr. Deane.—No. I do not think he said any thing.

Mr. Flournoy.—I understood you to say that Mr. Greenhow was present on Tuesday, when Mr. Pleasants' message was delivered to Mr. Ritchie.?

Mr. D.—Yes. Mr. Greenhow asked if it was to be a *melée*. I said no, I presumed there would be nothing of the sort. Mr. Wickham came up and advised that the parties should get off, or they would be arrested.

Mr. Stevenson.—Have you read the message as published?

Mr. D.—Yes. I have no doubt of its correctness as published.

Mr. Flournoy rose and remarked, that he

presumed there would be no difficulty among the counsel, in agreeing to what was Mr. Ritchie's answer to Mr. P.'s message. He then produced the original letter of Mr. Ritchie addressed to Mr. P. J. Archer, and said, Gentlemen of the jury, it is agreed that this is the written answer of Mr. Thomas Ritchie, Jr., to the message of Mr. Pleasants, of the 24th of February.

RICHMOND, Feb. 24, 1846.

Dear Sir:—The message delivered to me by you this morning, from J. H. Pleasants, was nearly in these words: "I am requested by Mr. Pleasants to inform you that he will be on the Chesterfield side of James river to-morrow morning at sun rise, armed with side-arms, without rifle, shot gun, or musket, and accompanied by two friends similarly armed."

This disguised challenge I protest against—first, because it is not in the form which is justified by men of honor, and to a great extent upheld by public opinion.

Second Because it prevents that certainty of equal advantage recognized by all gentlemen as an essential of the duel or fair and chivalrous combat.

Third, Because it gives to the challenging party the privilege of selecting time, place and weapons—a right which, according to all usage, belongs to the challenged.

Fourth, Because both the time and place are so selected as to occasion great inconvenience and danger to all parties concerned, from a legal prosecution.

Fifth, Because the terms proposed are savage, sanguinary, and revolting to the taste and judgment, not only of all honorable men, but of every man in the community, and calculated to cas odium on any one who may be governed by them.

I am ready to receive a proper challenge from Mr. Pleasants, but for the reasons above given, I solemnly protest against the terms he has proposed. On his head, then, must rest all the blame and reproach which should be incurred from acting in defiance of these considerations.

Notwithstanding these objections, I shall be on the ground mentioned at sunrise.

Do not consider me as casting upon yourself the slightest reflection. I do not consider you in any way responsible for the message delivered this morning.

I am your obedient servant,
(Signed) THOMAS RITCHIE, JR.

(The endorsement was an acknowledgment of the reception of the letter and of its having been shewn to Mr. Pleasants on the night of the 24th.)

Mr. Taylor.—You say, Mr. Deane, that Mr. Pleasants was called to stop so loudly as that the call might be heard at the cotton factory. Did he make any signs?

Mr. D.—No.

Mr. Taylor.—You think he heard plainly?

Mr. D.—Yes sir.

Mr. Taylor.—Was Mr. P. in advance of these gentlemen more than one fourth of the distance between them and the factory?

Mr. D.—I am not able to say. I do not know what the distance is.

After some repetition of answers given to questions before asked, Mr. Deane was discharged from examination.

Dr. A. L. WARNER, *examined.*

By Pros. Att.—Please tell the Court and Jury all you know about the charge against the prisoner?

Dr. W.—What part of the transaction shall I commence at?

Intimation was given that the witness should commence with Tuesday night.

Dr. Warner then proceeded with his testimony.

On Tuesday night I went to Mr. Lyons' house. I met Mr. Deane, who was passing out. He remarked that he was glad to see me, and said that there was to be a meeting the next morning between Mr. Pleasants and Mr. Ritchie. The house was crowded. I said to him that I would see him afterwards, as I was afraid our conversation might be overheard. I told him that I would be at Mr. Pleasants' room in half an hour. I found at Mr. Pleasants' room Mr. Archer and Mr. Deane with Mr. Pleasants. I was introduced to Mr. Archer that night. I asked what time of meeting had been selected. Mr. D., Mr. A., and Mr. P. commenced giving me the details of the message sent to Mr. Ritchie; but before the narrative had progressed thus far, Mr. Pleasants said that they would hand me the letter which had been received from Mr. Ritchie. I believe that the copy as published is correct, although I cannot say it is an exact copy. I thought it did not state anything about two hundred yards above the cotton factory being the place where the parties were to meet.

The Prosecuting Attorney remarked that the precise distance was omitted in Mr. Ritchie's letter.

Question by the Counsel for the accused.—Are you certain that it was said that two hundred yards above the factory was the place of meeting?

A. Yes, I am certain; and when I arrived on the ground I was not surprised to find the parties occupying the ground they did. I asked Mr. P. if he intended to sacrifice his life or take his adversary's life? He said he would go there to defend his and to take his adversary's life.

Q. Was that the night before the meeting?

A. Yes. I will state the reason why I interrogated him. It is not unusual for me to go upon the field in a professional capacity, and I said to him that I would not go except as a surgeon. I would not go where a party placed himself upon unequal terms. I made up my mind not to be the witness of a murder. My attention was next directed to the weapons. I saw two duelling pistols, and understood they had been loaded by another person. I did not hear that night who it was, but afterwards heard it was Mr. Tyrer. I heard Mr. Deane protest against taking any part, as the particu-

lar friend of either party. I heard him say he would not go as Mr. Pleasants' friend; and I also heard him say he would not go as a mutual friend. Mr. Deane and Mr. Archer left Mr. Pleasants' room. I then, in terms of remonstrance, asked him why he had sent the message; because I supposed he would have waited until Mr. Lyons should have furnished a card in relation to the settlement of the former difficulty between him and Mr. Wm. Ritchie. He then said, "So I did; but I went on the street, and there I saw the people in crowds waiting for a fight. I came home and construed it as justifying the propriety of an attack on my part. I was disgusted with their morbid appetite for a fight; I determined they should not be gratified, and so I went outside the limits of the town."

Q. You say Mr. P. assigned as a reason for changing the terms, that he had seen squads in the street.

A. Yes, and he said he had construed that to be a justification of the propriety of an attack. I asked him if any terms of meeting had been agreed on. He said there were no terms; but he intended to advance upon Mr. Ritchie and wait until he fired; and that then he would advance and fire, and he regarded one pistol as much as he should use or should want. About this time Mr. Archer returned, and Mr. Pleasants commenced undressing. I left the room and joined Mr. Deane at the gate. I importuned Mr. D. to go as a mutual friend, if possible to prevent any catastrophe. He finally consented. The next morning it was very inclement. A little before daybreak I went to Mr. Deane's room. It was in the gray of the morning, and the guards were just leaving the corner of the street below. We left Mr. Deane's room and went over Mayo's Bridge together. Mr. Archer and Mr. Pleasants were ahead. It was not light enough to identify them, except from the fact that I knew they were before me. After passing on the Manchester side of the bridge, I said to Mr. Deane, "The other parties are on the ground." I saw two, whom I afterwards ascertained to be Mr. Ritchie and a friend. I did not see Mr. A. and Mr. P. till I had passed around the factory. I then saw three indivi uals, of whom I knew Messrs. Ritchie and Greenhow. I did not know Mr. Scott. Mr. Archer approached Mr. Greenhow. After passing sixty or seventy yards beyond the fac ory, Mr. Deane left me, and said he wanted to see Mr. Greenhow. I overtook Mr. Pleasants and a white boy with cases, two or one, I do not know which, in his hand.

Q. How far above the factory?

A. About 100 to 120 yards. I looked back and saw some persons approaching from toward the cotton factory. I remarked upon the fact to Mr. Pleasants. He said, "I will have the ground shifted. The ground is narrow, and all of you are in danger. I will go higher up where it is wider."

Q. To whom did he refer?

A. I understood him to refer to all the parties present except himself and Mr. Ritchie. I remonstrated against his passing Mr. Ritchie; because, as no terms had been fixed, Mr. Ritchie might shoot him, inasmuch as he was armed and Mr. Pleasants not armed. Mr. P. said he did not think so. He wrapped his cloak around him and passed Mr. Ritchie. I walked behind some ten or fifteen yards. I did not hear him say anything to Mr. R. Mr. Greenhow was in conversation with Mr. Deane. I approached, and then shook hands with Greenhow and Ritchie. I heard Mr. Deane use the expression, "you say this can't be adjusted —that you will do nothing" Mr. Greenhow replied "I have had my friend here fifteen minutes after the time appointed. He is here to repel an assault from Mr. Pleasants. I will keep him here fifteen minutes more, and then remove him from the ground." He said he would not change the ground; he had stepped it off as nearly as he could make it, 200 yards.

By Pros. Att.—Was Mr. Ritchie present?

A. Yes. The parties were near the tree. Mr. Deane and myself left them and went to a spot which I can mark exactly. (Here Dr. W. marked the position, where he stood, upon the map.) Mr. Pleasants crossed the bridge. The boy carried the weapons. Mr. Archer called to him to arm. He threw off his cloak and commenced arming. [Here the map was explained to the Jury amid considerable confusion.] The cases were brought over the bridge to a spot under a tree. I think the arming took place there. He put a revolver in the left pocket of his coat; then, he took two duelling pistols, one in his right and the other in his left hand. I looked away about that time. The next weapon I saw him arm himself with was his sword-cane under his left arm. He had a bowie knife under his vest. Mr. Greenhow was thirty or forty yards in advance of us. Passing Mr. Greenhow, I saw him turn around, and thought he made some remark to Mr. G.; I did not hear what he said.

By Counsel for the accused.—How near were they together?

A. Within a few feet of each other. (Their position explained on the chart.) I heard both Greenhow and Archer's voice calling on Mr. Pleasants to stop. I remarked to Mr. Deane that there was an interruption. We then called to Mr. Pleasants to stop. The cry of stop lasted about two seconds: everything was done very quickly. Immediately after the cry, (I think it may have caused the cry of stop to cease,) I saw the flash of the first pistol, and heard the first ball passing between myself and Mr. Deane.

Q. How far was Mr. Pleasants then from M. Ritchie?

A. My impression differs from that of other gentlemen. I thought Mr. Ritchie fired at a distance of about thirty yards. I have no means of forming a correct impression. I was 100 hundred yards, or over, from them.

Mr. Flournoy.—Could you distinguish which voices called first to Mr. P. to stop?

A: I think the call was simultaneous.

By Counsel for the accused.—Was it loud enough for Mr. Pleasants to hear it?

A. Yes; I think Mr. P. turned his head. I saw the first flash and heard the ball pass. The ball from the second pistol, I think, passed over us. At the time of the third report, there were two flashes: the report of the pistol was almost one. I thought Mr. Pleasants then fired his first and Mr. Ritchie his third pistol. Mr. P. turned his body, so as to make me believe that he was wounded at the third fire in the left breast.

Q. At what distance did Mr. R. fire?

A. Mr. Ritchie fired at the distance of 25 or 30 yards. Mr. P. fired his first pistol within about 15 or 20 feet of Mr. Ritchie. There was a greater interval of time between them than between the remaining shots. After the third shot they were more rapid. Mr. P. advanced. At the third fire, Mr. Ritchie's form became obscured; Mr. P. still advancing. I saw him within 6 or 7 feet of Mr. Ritchie; they were standing obliquely. It was then that Mr. P. fired his second pistol. I am now giving my recollection of events transpiring in a short period, and under great excitement. I saw Mr. P. level his second pistol; I heard the report: I saw Mr. Ritchie staggering back, and I remarked to Mr. Deane, "Ritchie is a dead man." I so inferred because Mr. P. had levelled his pistol at him and he staggered back. Then I heard several discharges without knowing who was firing. I saw Mr. P. striking at Mr. Ritchie with some weapon, whether a cane or a pistol I do not know. I also saw him make several thrusts with his sword-cane. He gave several blows and two or three thrusts. I do not know if the sword was sheathed. During this part of the affair, I saw Mr. Ritchie with his sword in hand: I did not see him draw it. I saw him in the attitude of one making a thrust, and did see him make one or two thrusts at Mr. P. I remarked to Mr. Deane, "let's go up or he'll be stabbed." Two or three times the cry was made "stop, Pleasants; stop, Ritchie." We went up. Mr. P. was tottering; Mr. R. was standing a few feet off, the point of his sword on the ground, and he perfectly quiet. Mr. Archer took Mr. P.'s arm, and carried him aside and laid him down.

Q. Is it in your recollection that Mr. P. fell?

A: No. He may have fallen; but he was laid down by Areher, I think. He was on the ground when I reached him. Before I reached Mr. P. I saw Mr. Ritchie leaving the ground. I remarked to Mr. Deane, "both are wounded." Mr. R. walked a short distance and then ran.

Q. Was Mr. R. bleeding?

A. I do not know, as my attention was not called to him.

Q. Was any blow aimed at Mr. P. after the combat ceased?

A. No, not after it ceased.

Q. Was Mr. P. in the power of Mr. Ritchie?

A. My impression was that both parties were exhausted, and that neither were able to renew the combat.

Q. You saw him walk and run?

A. Yes. His gait was unsteady. I did not have time to observe him particularly; but I thought that there was a vibrating motion of the body that indicated exhaustion. I saw no reason for ceasing the combat except from the position of the parties and their exhaustion.

Q. Did you see Mr. R. return his sword?

A. Yes: it was an artillery sword.

Q. What was the length of Mr. Pleasants' sword?

A. It had a long blade for a sword-cane. I was told twenty inches.

Mr. Flournoy.—Who went with Mr. Ritchie away?

A. I do not know: I went with Mr. P. from the ground, and attended him till his death.

Mr. Taylor.—You said your first interview was on the Sunday evening preceding the recontre?

A. Yes.

Q. I understood you to say he told you it was his purpose to risk his life?

A. That was on Tuesday evening.

Q. Was there any further communication between you and Mr. P. between Sunday and Tuesday evening?

A. He said he did not intend to assault Mr. Ritchie on the next day—the day of parade.

Here the testimony of the witness was interrupted by the adjournment of the Court.

WEDNESDAY, APRIL 1st.

The Court met at an early hour this morning, and after awaiting some time the arrival of Dr. Warner, proceeded with the trial by calling another witness.

E. GARY *examined.*

By Pros. Att.—State all you know with respect to the charge against the prisoner.

A. On the morning of the 25th of February, as I was going to Richmond, when I got to the arch of the canal by the cotton factory, I saw several gentlemen up the river. I stood still until they stopped shooting.

Q. At what arch were you standing?

A. At the arch across the Mayo Mill canal.

By counsel for the accused.—State what you know and no more.

A. I do not know who were on the ground.

By Pros. Att.—How many reports were there?

A. I think there were seven.

Mr. Stevenson.—Of what?

A. Of fire-arms. I do not know what kind.

Mr. Flournoy.—Did you see the parties leave the ground?

A. I saw some of them.

Q. Where were you stopping then?

A. In the same position, at the arch.

Q. Could you see the parties distinctly?

A. I could not.

Q. How many did you see on the ground?

A. I could not tell. I did not count them.
Q. Did you see them during the conflict?
A. No.
Q. What prevented you?
A. There were several persons between me and those engaged in the conflict.
Q. Did you know any of the persons?
Mr. Taylor.—You said you knew none of them.
A. I did not know them.
Mr. Flournoy.—You saw some go off; how did they go?
A. In a hack; they got in close by me.
Q. How many got in the hack?
A. I saw three get in.
Q. Did any appear to be wounded?
A. One of them did.
Q. What wounds?
A. I saw blood on his lip.
Q. Did you hear them say any thing?
A. I am not certain; but I think they told the driver to drive pretty fast, or words to that amount.
Q. Did you hear any bullets?
A. I think I did.
Q. Did you hear one strike the house?
A. No.
Mr. Taylor.—How many did you hear?
A. Four, I think.
Mr. Stevenson.—Are you not certain?
A. No, I am not certain. I think I heard something that was bullets, although it might be imagination.
Mr. Flournoy.—Were the parties on the ground, when you got to the arch?
A. Yes.
Q. Did you hear the firing commence then?
A. No.
Mr. Stevenson.—How near were you to the three individuals who got into the hack?
A. Within ten feet.
Q. You saw one with his mouth bleeding; was it bleeding much?
A. Not much.
Q. What was the appearance of his mouth?
A. It looked as if it had been struck with a stick; it was not cut, but mashed.
Q. How near were you when you saw the blood?
A. I was as near as that wall, (pointing to the court-house wall, about ten feet from where he stood.)
Mr. Taylor.—Was the man with the blood fronting you?
A. Not, except when coming down the canal bank.
Q. How long were you on the arch?
A. About five minutes.
Q. Did any balls pass near you?
A. No, sir; one came towards me,—not near me. The balance, I thought, went up the river.
Q. How far were you standing from the persons engaged in the conflict?
A. I think about 250 yards.
Q. The other balls went directly from you?
A. Yes.
Q. Then you think you heard them 250 yards?
A. Yes.
Q. Was the cotton-mill in operation?
A. Yes, it was about starting; there were about twelve persons around the factory.
Q. How far were you from the door of the cotton-mill?
A. About 50 yards from the door of the upper mill, and 15 or 20 yards from the other door.
Mr. Stevenson.—Don't you think that you took it for granted that balls were flying?
A. Yes, I started under the impression that fighting was going on.
Mr. Jones.—Have you any recollection of having heard the whizzing of balls?
A. Yes, I think I did.
Q. Was any object struck?
A. No, not that I know of.
Q. Did you not know what persons were on the ground?
A. No.
Mr. Stevenson.—Did you examine any house in the neighborhood to ascertain if any balls were in it?
A. I did not then or any other day.
Mr. Flournoy.—What time in the morning was it?
A. About sunrise.
Q. Did you see what arms the gentleman had who got in the hack?
A. I saw some. I saw one pistol and a sword. I do not know who had it.
Mr. Stevenson.—What kind of a sword?
A. It was an artillery sword. It was about so long (describing it.) It was a heavy sword. I do not know whether it had a belt to it or not.
Mr. Flournoy.—What sort of a pistol did you see—a single barrel or a revolver?
A. I cannot tell.
[The sword worn by Mr. Ritchie was here exhibited to the jury.]

Mr. C. RADZIMINSKI *sworn.*

Mr. Stevenson.—(Shewing the map of the ground where Messrs. P. and R. met.) Is that an accurate map of the ground?
A. Yes. I surveyed the ground, and made that map. [Here Mr. R. took the map and explained its scale and the points marked in it.] He further testified that he had seen the mark of a ball in the house used as a cooper shop, near the factory. The ball struck the house at an elevation of nine feet above the ground. The gable end of the house was exposed, and presented a front to a ball from up the canal.

Dr. WARNER'S *Examination continued.*

By the Defence.—I asked you last evening if any thing more took place on Sunday the 22nd of February, than what you have mentioned. I understood you to say that nothing more occurred, except that Mr. P. said he would not attack Mr. R. the next day?
A. You misunderstood me. I made no an-

swer to that part of your question. There was other conversation between Mr. P. and me.

Mr. Flournoy.—Please state again what you stated in your evidence?

A. You misapprehend my evidence.

Q. I understood you to say that Mr. P. told you he would not attack Mr. R.?

A. Yes.

Q. Was any thing at all said by Mr. P?

A. Yes; we had fifteen or twenty minutes conversation.

Q. Was it in relation to the controversy between himself and Mr. R?

A. Yes. Our interview was accidental. Mr. P. introduced the conversation, remarking, "Those young men have placed me in a very unpleasant and terrible position." I asked who? He said he alluded to the editors of the Enquirer. He asked my opinion of the matter. I told him I had abstained from expressing an opinion. He said he would take it as a favor if I would tell him what I thought. I told him no: I would tell him what the public said. I told him that the public seemed to think that his letter had placed him on high ground, and he had only to maintain that ground. He said he thought so himself, and asked my opinion. I told him I thought so, and that he should let the matter alone. He said that he had been in the street with a cane looking for Mr. R.; he carried no other weapon, and thought he should merely strike him in the face with his glove. He went on to state what he regarded as the cause of this assault upon him in the Enquirer: I do not know if it concerns this matter.

After consultation among the counsel, Mr. Stevenson said,—We do not wish to go into matter concerning the previous differences.

Some conversation ensued between the counsel on both sides, and then the witness proceeded:

He said he had always made it a point of delicacy with him ever since the elder Mr. R. had retired from the Enquirer, to treat his sons with courtesy and respect, but that he had failed to obtain a similar feeling from them. He said they had adopted an old feud between himself and their father, and he believed they intended to hold him up as a coward or to take his life—that he further believed * * *

Mr. Stevenson.—I see it stated in the evidence, before the inquest, that "Dr. Warner stated that Mr. P. was 15 or 20 yards from Greenhow and Archer when called on to stop." Please state where on the map.

Dr. W. examined the map and explained.

Mr. Flournoy.—I understood you to say that at Mr. P.'s second fire, Mr. R. was standing further on?

A. No. I said nothing about Mr. R.'s position. My impression was that Mr. R. was about two-thirds of the distance between the oak and the canal on the Richmond side, within the range of the tree. Here the witness described the ground and the position of the parties.

Q. State what Mr. P. said to you about his being out on Saturday evening?

A. I told him I regretted he had been out for the purpose of assaulting Mr. Ritchie. He said he had no arms. He intended merely to have struck him in the face with his glove.

Q. When was that?

A. On Sunday evening. I reminded him that the next day was the day of the parade, and that he had better not commit any outrage. He replied that he would not. He then said that a friend of his, Mr. M. Robinson, had gone to Mr. Lyons for a statement in reference to the adjustment of the affair between himself and Mr. Wm. Ritchie. Then, I extracted from him what I regarded as a promise that he would not pursue the matter any further until a statement should have been obtained from Mr. Lyons. I determined not to be an adviser or a party to any difficulty. He remarked that my advice corresponded with that of Mr. Macfarland and Mr. Robinson. I left him under the impression that there would be no conflict.

Q. Had the meeting at Mr. Lyons' anything to do with this affair?

A. Nothing whatever. I was there as a guest. This conversation was accidental.

Q. Did you see Dr. Brown on the field?

A. No.

Q. Did you attend Mr. P. till his death?

A. Yes.

Mr. Jones.—Did Mr. P. remark that he would have Mr. R.'s life or Mr. R. should have his?

A. That remark escaped my mind. After stating the cause of the difficulty, he said "I have nothing left me and my children but some little reputation. That I will preserve with my life," and "he must either have my blood or I will have his."

Mr. Flournoy.—Describe Mr. P.'s wounds.

Dr. W. described them minutely. A pistol ball wound on the left side of the thorax, an inch and a half below the clavicle; the ball lodged under the pectoral muscle and did not perforate the thorax. Two ball wounds in the left arm, three inches above the elbow—the entrance and exit of one ball. A third ball entered the palmar surface of the left hand, about the middle of the metacarpal bones and escaping on the dorsal surface about the middle of the metacarpal bone of the index finger. A fourth ball entered the scrotum somewhat to the right side, cut the spermatic cord and crossed the perinæum. A wound from a ball passing out was found a little within the verge of the anus, and another of the same character in the centre of the left glutial region.

Q. Was there any other wound?

A. None. An angular rent in the pantaloons opposite to the left groin, as if made with a sharp instrument; but no corresponding wound on the body.

Q. Was Mr. P. conscious of his dying state?

A. Perfectly so.

Q. Was he conscious from the first?

A. Yes, both on the field, at the toll house, and going over the bridge in the carriage, he expressed the conviction that he was mortally

wounded. I was not able to give an immediate opinion, as I had not an opportunity of examining his wounds.

Q. Did he state to you the manner of his death?

Mr. Taylor.—Wait.

Mr. Flournoy.—I did not ask what he stated, but whether he made any statement.

A. He did make a statement on the field, on the way home, and a few hours before his death. He answered questions which were propounded to him.

Mr. Jones.—Did you express an opinion as to whether he was mortally wounded or not, on the field?

A. No. I told him he was severely wounded, and endeavored to encourage him.

Q. Did you not express an opposite opinion?

A. I said that none of his wounds were necessarily mortal. His greatest jeopardy consisted in their number.

Q. After that, did he speak of his situation?

A. Yes: he appealed to me not to flatter him. Throughout, he said, he believed himself mortally wounded. I made no effort to correct that impression.

Q. You never expressed any other opinion to him?

A. No.

Mr. Flournoy.—Mr. P. said from the first he was satisfied he would not recover?

A. Yes. I examined the wounds and saw that there was no hemorrhage except from that in the hand, which would not immediately exhaust him.

Q. Did he ever express any other opinion than that he would not recover?

A. Never. On Wednesday evening, a number of friends were in his room, and he appeared cheerful. With that exception, the symptoms were not favorable. Dr. Cabell and others were there who had not charge of the case. My opinion was not changed.

Q. You never attempted to correct the opinion he had of his being mortally wounded?

A. No.

Q. Were the statements he made you, prior to his being more cheerful?

A. Yes; they were all prior.

Q. When did you dress the wounds?

A. Immediately after his arrival at home.

Q. Did he die of those wounds?

A. Yes: at about 2 o'clock on Friday morning.

The Prosecuting Attorney then rose and said, I propose now to introduce the dying declarations of Mr. Pleasants.

Mr. Taylor.—We deem it proper, before the dying declarations of Mr. Pleasants now offered to be given in evidence to the jury, to present to the court our view of what is necessary to be previously proved, and if the dying declarations in the case before the court, shall in its opinion, be admissible evidence, (which we do not admit, but deny,) to be given to the jury at all, to ask of the court to expound to the jury the limitations which the law imposes on such evidence, for their guide, in applying the evidence to the case.

The dying declarations of a person, who has received a mortal wound, that is, declarations made under the apprehension of almost immediate death, are admitted in criminal prosecutions, when the death of the deceased is the subject of the charge against the accused. The principle of this exception to the general rule is founded partly on the awful situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath, and partly on a supposed absence of interest or motive upon the part of the deceased to misrepresent, standing on the verge of the next world, which dispenses with the necessity of a cross-examination. 1 Phill. Evid. 235; and in the same work, Vol. 2nd, 610, note 455, it is said, "On the whole, it is plain "that the rule as to dying declarations is one "of policy and necessity, arising in the par-"ticular case. It shall not be allowed to the "offender to commit a homicide, and by the "same act to put to silence the only witness "at whose mouth he may be condemned."

In the case of King vs. the Commonwealth, 2 Virg. Cas. 81, the court said, "That to make "a dying declaration admissible evidence, it "was necessary not only that the person "should be dying, but that he should be con-"scious he was dying, and that there was no "hope of his living, at the time the declaration "was made."

In Starkie on Evidence, Vol. 1, 28, (6th American edition) the author in treating of this exception to the general rule, which admits in evidence declarations made by a person *in extremis*, and under the apprehension of approaching dissolution against a person not present, and who therefore had not an opportunity to cross-examine and elicit the whole of the truth, says, "This is an exception to a rule "which is in general to be considered as abso-"lutely essential to the ascertainment of truth, "it is therefore to be received with the great-"est caution, and is never admitted, unless the "court be first satisfied that the party who "made the declarations was, at the time of "making them, conscious of his danger, and "had given up all hope of recovery, &c." 1 Vol. Phill. Ev., 235.

The court must be satisfied from the evidence, and decide that the deceased at the time of making the declarations which are about to be offered in evidence to the jury, was *in articulo mortis*, and that he had no hope of living at the time, before evidence of the declarations can be allowed to be given to the jury against the accused.

The court must further be satisfied by the evidence and decide that the deceased, at the time of making the declarations, of which evidence is about to be offered to the jury against the accused, was dying, and was conscious that he was dying, and that he at the time of

making the declarations was possessed of his memory and reason in such a degree as to remember the matters he stated, and to understand what he stated, and that he stated intelligibly what, and only what, he meant at the time to state. Strongly as the situation of the deceased may have been calculated to induce the sense of obligation to speak the truth, it must be remembered that it may not less strongly have had a tendency "to obliterate the distinctness of his memory and perceptions." 2 Evan. Poth. 293.

In 2, Starkie on Evidence, 262, it is said, speaking of dying declarations: "This seems to be the only instance in which evidence is admissible against a prisoner who has not had the power to cross-examine. An anomaly, which in itself, calls for great caution and circumspection in the use and application of such evidence."

If the principle of this exception to the general rule, is a principle of necessity and policy, because it shall not be allowed to the offender, to commit a homicide, and by the same act put to silence the only witness by whose mouth he may be condemned, then I submit that this case is not within the exception to the general rule of evidence. What was done by the accused in this case, was not done under cover of night, was not done in secrecy, but in the open day, in the full blaze of light, in the sight and hearing of various persons, whose credit is not impeached, and is unimpeachable; many of whom are here and have been examined as witnesses, by the Commonwealth, others are here, and may be examined by the Commonwealth, and all are within the reach of the process of this Court, and their presence in Court may readily be obtained. There is before the Court and Jury very full proof of every fact, certainly, of every material fact connected with the death, and the cause of the death of the deceased. The same facts may be proved by other eye-witnesses, if deemed necessary by the Attorney for the Commonwealth. Is this, then, a case in which the dying declarations of the deceased are competent evidence? Here every fact by the testimony given in, is as clear as light; not one additional ray of light may be expected from what are called the dying declarations of the deceased, material to this cause. No one doubts or can doubt, but that every material fact connected with the death and the cause of the death of the deceased, is fully before the Court and Jury.

Suppose an individual at the door of this house, in the presence of a dozen or more of the most respectable and intelligent persons in the country, were to shoot a person, of which shooting, the person shot should in two days die; would the law allow evidence to be given to the Jury of the declarations made by the person shot between the time he received the wound and his death, on the trial of the accused for murder, the deceased being under the apprehension of almost immediate death at the time the declarations were made? I submit it would not, because not within the reason on which the exception to the rule is founded. The case at bar as little requires the admission of the evidence as the case supposed. I submit that the evidence of the supposed dying declarations ought not to be received, and I ask that it be excluded from going to the Jury. I am not aware of any case like the present, in which such evidence as is now offered, has been allowed to go to the Jury, if objected to by the accused or his Counsel.

But if the Court shall differ from me, and shall hold when all the pre-requisites to its admission shall be established by satisfactory proof, that the declarations are competent evidence to go to the Jury—then, we ask of the Court, for the guidance of the witness or witnesses, to state, that the declarations of the deceased, made *in articulo mortis*, must be strictly confined to the death charged in the indictment, and the circumstances of that death; according to the principle decided in the King vs. Mead, 9, Eng. Com. Law Rep. 197. The King vs. Lloyd and others, 19, Eng. Com. Law Rep. 360, 361, and note (a.)

Every principle of the law of evidence is of great importance, and none can be more so than such as may affect the liberty or life of a citizen. To extend the principle on which dying declarations may be given in evidence to a Jury, beyond the cases to which it has been confined by modern decisions, or to cases lying without the reason of the exception to this general rule; or to allow such evidence to be run out by the witness beyond the death, and the circumstances of the death of the deceased, would be in a high degree pernicious. I feel fully the comfortable assurance, that the Court will, without reference to, or influence from, any other consideration, but the justice of the case, lay down the rule *secundum legem, si ruat cœlum.*

I have said that it is highly important, that the rules of evidence should be strictly observed; I do not mean thereby, that it is of any moment to the accused in this case, whether the evidence of the supposed dying declarations shall be admitted to go to the Jury, or shall be excluded; except in respect to time, and in this respect it may be of the greatest importance to the accused, since its introduction may lead to so protracted an examination of evidence, as to defeat a trial during the present term, the end of which is not far off, and is rapidly approaching.

The Court then took a recess until after dinner.

Evening Session.—The argument upon the admission of the dying declarations was resumed.

The Prosecuting Attorney replied to the remarks made by Mr. Taylor.

He commenced by saying that he did not consider the discussion of the matters referred to by the Counsel, as having anything to do with the question before the Court, which was whether the dying declarations should be admitted or not. Another question is, however, made; and it is contended, that because the testimony is secondary, there is no power in the Court to admit it. I apprehend that is not the law. The effect would be to deprive the Commonwealth of its right to all of its witnesses, and confine it to the testimony of particular witnesses. I will refer you to the case of King. There were other witnesses there, and yet the testimony of the dying person was received against the accused. I refer you to the case of Vaughan, who was tried here in this Court. In that case the dying declarations of Pleasants were received, although another witness, Walker, was present all the time and in the power of the Court. The point was not then raised on the trial, evidently because it could not be successfully raised; and I find no author to sustain the gentleman in his point now. It is very true that dying declarations can only be received in cases of homicide, and it is also true that they can only be received when the circumstances under which they are made, are such as to give them the same solemn sanction as an oath. But how can we know whether the other witnesses are acquainted with all the circumstances which the dying witness knew? There may be circumstances not known to a third party. The condition of the dying person may be only known to himself. The third person may be a *particeps criminis*, and may have helped to inflict the blow. True, he is a competent witness; but should the commonwealth be compelled to rely on him? Is there any reason for it? I am unable to see any authority for such a doctrine either in law or in reason.

With respect to the admission of the dying declarations in this case, I do not understand that they are objected to. The objections raised was to the extent to which they are to be admitted, about which we know nothing as yet.

I will refer you to several cases in Russell on Crime, particularly to Mosely's case, where the party survived eleven days, and the surgeon was hoping for a recovery all the time; yet his testimony was admitted by the Court, consisting of twelve Judges. So also in Woodcock's case, the declarations were admitted.

I therefore submit that the dying declarations of Mr. Pleasants should be received. If matters not proper to be introduced are gone into, then the Court can interfere and assign a limit.*

* Cases referred to in the above argument. *King's* case, 2 Va. cases, 78; *Gibson's* case, Id., 3; 2d, Russell, 752 v. seq.; 1st Moody's Reserved Crown cases, 98.

Mr. Stevenson rose to reply.—

He said that if any propositions could be considered as sound they were those which had been submitted to the Court, and so ably maintained by his friend and colleague, Mr. Taylor. He should content himself, therefore, with a brief notice of the observations which had been made by the Commonwealth's Attorney, in opposition to the motion. Before doing so, however, he would ask the indulgence of the Court in adverting, for a moment, to the general doctrine of the admission of the declarations of a party *in articulo mortis* as evidence in criminal prosecutions, and to a recent decision which he understood had been pronounced by the General Court of Virginia on the subject. It would hardly be necessary for him to state, what the Court so well knew, that this species of hearsay evidence was not known, certainly not acted on, in the early judicial history of England. It seems to have been unknown in the times of Coke, Hale or Hawkins. It had been borrowed, in some of the States, from the English practice, but whether rightfully or not, was yet, he thought, to be determined. It was first introduced, he believed, (or at least it had been so stated by some of the British elementary writers,) in the Reign of George the 1st; and the first reported case was probably that of the *King against Reason and Tranter*, 1st *Strange*, 499. It was admitted originally in England as a matter of necessity, and for the avowed purpose of *preventing and punishing secret assassinations*. It often happened, that there being no third person or eye witness present, and one party being murdered, the other escaped. It was to remedy this evil, Mr. Stevenson said, that the dying declarations of the party killed, who *in extremis*, and after the mortal wound given, were first received in evidence by the English Judges. It was done, however, and so avowed, in violation of two of the fundamental canons of evidence. 1st. It was hearsay evidence, not under oath; and 2nd, it defeated the *viva voce* examination of witnesses, and the right of cross-examination; an important and vital right, which all must admit, ought never to be touched, but under the strongest necessity. Hence, it could hardly be necessary to remind his Honor, Mr. S. said, that the opportunity of investigating the accuracy and truth of evidence, and especially that of applying questions, by the answers to which it may be explained or qualified, was a right which was wholly lost to an accused party by this species of hearsay evidence. This was felt and acknowledged in England, and admitted by her judges and jurists. In this country there was another, and he thought a most conclusive objection to it. It was in direct violation of the Bill of Rights of Virginia, and one of the amendments of the Constitution of the United States; which declares that in all criminal pro-

secutions, every man shall have a right to demand the cause of his accusation, and to be *confronted* with his *accusers and witnesses;* a privilege which is wholly denied him by the admission of such evidence. Now, Mr. Stevenson said, he knew that in Virginia, this kind of evidence had been, in some few instances, admitted under peculiar circumstances, upon the authority of the English decisions, and the doctrine had been, in the late case of Hunter Hill, affirmed by the General Court, and declared not to be in *violation of the Bill of Rights* or *Constitution of the United States.* There was no report of that case, and he could not therefore, speak with certainty, of its extent or character. He had understood, however, that it was based upon the ground that the provision in the Bill of Rights, was intended alone to guard the *trial by jury*, and had no reference to the rules of evidence or their limitation. Such a decision was for the first time solemnly pronounced upon an important constitutional question, affecting life and liberty, and calculated, Mr. S. said, to arrest and command public attention, and merited the most deliberate consideration. He had understood moreover, that the Court were divided in the opinion, but to what extent he had not learned. Regarding this decision as unsound, he would beg leave to offer one or two views, which might not be deemed unworthy of consideration.

The eighth section of our Bill of Rights declares, "That in all capital or criminal prosecu- "tions, a man hath a right to demand the cause "and nature of his accusation, to be confronted "with the accusers and the witnesses, and to "call for evidence in his favor, and to a speedy "trial by an impartial jury of his vicinage." And the sixth article of the amendments to the Federal Constitution also declares—"That "in all criminal prosecutions the accused shall "enjoy the right to a speedy and public trial, "by an impartial jury of the State and district "wherein the crime shall have been commit- "ted, which district shall have been previous- "ly ascertained by law, and to be informed of "the nature and cause of the accusation; and "to be *confronted* with the witnesses against "him; to have compulsory process for obtain- "ing witnesses in his favor, and to have the as- "sistance of counsel for his defence."

Here we have a two-fold barrier, in relation to the personal security of the citizen; one under our own Bill of Rights and constitution, and the other under the provisions of the Federal constitution.

By these, there are five important and essential rights secured to every one accused of crime, and which neither Legislatures nor Judges should be at liberty to touch or impair. The right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be *confronted with the witnesses against him*, to have process for his own witnesses; and to have the assistance and benefit of counsel. Now there was not, Mr. S. said, one of these rights more important than that relative to the presence and cross-examination of the witnesses, on whose testimony, the life or liberty of a citizen was demanded by the country. It was in vain to say, that the enlightened men who framed the Constitution and Bill of Rights, did not intend to do more than simply assert the right of *Jury trial*, and leave untouched the whole subject of evidence under the British rules and decisions. They meant to guard life and liberty, as well against the administration of the law, as against the law itself. The right of having the witnesses in the presence of the accused and the Jury, and subject to cross-examination, was one of the great benefits intended to be secured. This right, always regarded as important in civil causes, is much more so in criminal prosecutions. Why else was the word *confronted* used? What does it mean? The just interpretation of *confronting witnesses and accusers*, is to bring them face to face! In common parlance, there can be no doubt. Nor does the legal intendment, vary from its received meaning in ordinary speech. The true rule of construction was to interpret an instrument and especially one of organic law, so as to give to it the fullest effect. Every part of the instrument was not only to be made to take effect, but every word to operate in some shape or other. These provisions in the Constitution of the U. States and the Bill of Rights, ought to be read, as if the words were, *confronted with their accusers face to face.* If it were so, would this hearsay evidence be competent, whether *in extremis* or not? In some of the State Constitutions, this phraseology is used. Mr. Stevenson referred to New Hampshire.—In the constitution of that patriotic State, it was expressly declared, "that no one should "be held to answer for any crime or offence "until the same is fully, substantially, and for- "mally described to him; that the accused is "to have the right of producing all proofs that "may be favorable to him; and also the right "of meeting the witnesses against him *face to "face.*" Such, Mr. S. said, was the fair and common-sense meaning and intention of the provisions in our Bill of Rights and Constitution of the U. States. Has such evidence as this ever been received *in criminals trials in New Hampshire?* It is presumed not. Again. In Finn's case, reported in 5, *Randolph* 701, the General Court, decided that it was not admissible in a criminal prosecution, to prove what had been deposed to, under oath by a witness, on a former trial, who had since died or was absent from the commonwealth. And why? But because the witness whose evidence was to be proved ought to be *confronted with the accused*, and be *present in Court*, subject to cross-examination. And wherefore, ought not the evidence of a witness examined under oath, in the presence of the party accused, and cross-examined by him, and the whole reduced to writing, to be as soon if not sooner received, than the bare declarations of a man *in extre-*

mis, not under an oath, and not cross examined, reported by persons who heard them?

It may be said, however, that these declarations, *in articulo mortis*, are similar to the admissions of a party accused, and are competent evidence, being proved by witnesses who *are to be confronted with accused.* There is no analogy whatever between the cases. How can the *admissions* of an accused party be analogous to the hearsay declarations of another party under such circumstances? The benefit intended to be secured by the Constitutional provisions, was not to be confined alone to ascertaining whether the admissions or declarations deposed to, were true, but whether if true, they could be legally used. In dispensing with the presence of the witness, you make his declarations evidence. To what consequences might not this doctrine of setting aside these constitutional safeguards lead, in after times, connected either with legislators or judges? Why not extend the doctrine a little farther, and say that the evidence given on former trials may be received on a subsequent one, in case of death or absence of the witness? Would proving this by persons confronted with the accused, alter the case? Surely not. And on the score of necessity, it might be equally strong, if not stronger, than in cases of *dying declarations?* Why not still advance a step higher, and say that the deposition of a witness in *a dying state*, or about to leave the country, might be taken and their contents proved by witnesses and become evidence, to sustain a criminal prosecution? It can be done in civil cases, why not in criminal? Could the Legislature of Virginia do this? Would it be constitutional? Would the people submit to it? Mr. S. said, he presumed not. And yet what difference would there be in principle, between these cases and the decision which has been made, as Mr. S. said, he understood it, by the General Court in the case of *Hunter Hill?* Besides, this decision of admitting hearsay evidence in criminal cases, is done under the authority of the common law of England and her judges.—If so, why is it to be confined to the existing rules and decisions on the subject of evidence? Let us suppose that in England, the rules of evidence, should be farther extended and improved, and under the same plea of necessity, their courts should decide that evidence on one trial, should in case of death or removal, be proved by witnesses confronted in a subsequent trial; or that depositions might under special circumstances be admitted in criminal trials; what would prevent such decisions from being regarded as binding, here, under this decision of the General Court, and in the teeth of the constitution and bill of rights? The object which the framers of the declaration of rights had in inserting this provision, and of those who passed the amendments to the Federal Constitution, must have been to secure to accused persons the benefit of having the witnesses against them personally present, and their right of cross-examination. That the jury and the accused might see the witnesses and hear the precise words uttered, and observe throughout the manner and demeanor with which the evidence was given and judge of the truth of what was deposed to. It was in vain then, Mr. Stevenson said, to talk of the provisions of *Magna Charta* and the practice under it. The provisions of the English charters of liberties and ours, were essentially different in several particulars. As to *Jury trial*, it was claimed and exercised in England as an invaluable right before the grant of *Magna Charta* by King John, or his successors Henry III or Edward the First. In none of those great charters, was there any provision that the accused should be *confronted with the witnesses face to face, or have a speedy trial, or even the assistance of counsel in his defence!* After our Revolution, it was deemed proper to collect and distinguish in the shape of abstract propositions and elementary maxims, the most essential articles connected with civil liberty, and the natural rights of man. This was done in bills of rights and constitutions of the several States of the Union and by our Federal compact of government. In this work, Virginia was amongst the first who led off, and was followed by many of her sister States.

Now, Mr. Stevenson said, that if this right of having the witnesses, in all criminal trials, confronted with the accused, was surrendered, one half of the benefit of the trial by Jury, would be lost. For one, he said, he was not prepared for breaking down this barrier, secured to the citizen against the government, under any plea of necessity or common law rules of evidence—so far they were abrogated. As a citizen of Virginia, he should always oppose it. It was immaterial to him in what way these securities of life and liberty were assailed—whether under the forms of judicature or by acts of legislation. He had as much and as high a respect for the judiciary of his country as any man ought to have; but he had more for the constitutional rights secured by the charters of our liberties, and which could never be departed from, without injury. Nor did it matter, what the practice had been, in Virginia, on this subject of allowing declarations *in articulo mortis*, to be given in evidence. There had been but few cases, and the constitutional provisions had not been relied on. Precedents could have no influence, in constitutional questions. They ought not, where there were written constitutions. And such had been the practice of the country. At one time, we know that the Court of Appeals entertained, and for years, *criminal jurisdiction.* The question was afterwards raised and discussed, and the decision, notwithstanding the long practice under it, was reversed. No time or practice can render that constitutional which is not in truth so. So, too, as to this statute of duelling: its provision, as to the oath, was applied by the General Court and others to lawyers; and they were required to take it,

and did take it. In 1810, it was resisted by a distinguished member of the bar, who refused to take it, and the Court of Appeals sustained the objection, after an able argument by him. (Leigh's case, reported in 1 Munford.)

In relation, then, to the decision in Hunter Hill's case, Mr. Stevenson said, he must regard it in the extent to which he understood it went, as a virtual repeal of an important part of the sixth amendment of the Constitution of the United States, and the 8th article of the Bill of Rights of Virginia, and therefore merited, he thought, the attention of the people.

But if the judge who presides in this Court shall feel himself bound, as he no doubt may do, to regard this decision as binding on him, and to decide that the dying declarations of the deceased may be received in evidence, and weighed by the jury, let us then, said Mr. S., see under what *restrictions* and *limitations*, it is to be done.

The principle, upon which this exception to the general rules of evidence stands, is clear and obvious. It is this: that a person who knows that his death is approaching, and that he stands on the brink of eternity, and is soon to be called to acount for what he says and does, before a Judge, to whom no secrets are hid, will feel as much bound, and as strong a motive, to declare the truth, and abstain from falsehood, as one under the solemn obligations of an oath. This is laid down by all writers on the subject, as the rule. But before these declarations can be admitted, it is incumbent on the party offering them in evidence, to show two things: 1st, That the declarations were made *in articulo mortis*, under the apprehension and belief of impending death; and 2d, The Court are first to decide, before the declarations go to the Jury, whether the party was in such a situation as to permit his declarations to become evidence in the case.

On the first point it was immaterial, Mr. S. said, what the real situation of the party might be, or whether he was actually dying; it was essential, in order to let in his declarations, that he should himself believe and feel, that he was about to die—that all hope of living had been abandoned by him; all motive to falsehood silenced; and that he felt urged by all motives to speak the truth; that he must be deeply conscious of his mortal state, and have his mind fixed on death and his Maker, at whose bar he expected shortly to appear. Such must be the state, Mr. S. contended, of the individual whose declarations were to be given in evidence. He referred, in support of this, to 2 *Russell on Crime*, 383-4-5-6; 1 *Philips' Evidence*, 255, and *Starkie on Evidence*, and the cases referred to by these writers. In confirmation, too, of this, it was competent to show the *religious opinions* of the party, and if it could be made to appear, that he did not believe in a God, or future rewards and punishments, his declarations, no matter what his situation might be, could not be received in evidence. On this point, the authorities were clear. It followed, then, Mr. S. said, that before the declarations could be given, the situation of the deceased at the time they were made, must be decided in the first instance by the Court. On this point, Mr. S. referred to 1 *East* 357, 8, 9; 2 *Starkie*, 459; and the cases cited. This question was also, it is understood, before the General Court, in Hunter Hill's case; and the decision was, that although the judge who sat on the trial did not first decide on the situation of the party, but let in the declarations, yet it was not error; inasmuch, Mr. S. presumed, as the declarations were finally admitted to go as legal evidence to the jury, and no injury could therefore have resulted. But suppose the whole declarations should be first detailed to the jury, and then the Court decides, that the situation of the party was not such, as to allow them to become legal evidence against the accused, and exclude them; how do you get rid of the impressions which they may have made on the minds of the jury? It must be apparent that the reason of the law was to avoid all this mischief, by making it the duty of the Court, in the first instance, to hear the evidence, as to the situation and state of the party, before his declarations are proved, and if it be such as to warrant his declarations to go to the jury, then allow it to be done. If not, then exclude them. This is common sense and justice, and such, he presumed, ought to be the practice.

But in discharging this duty, Mr. S. said, great caution and circumspection is to be used, as to the state and condition of the party's mind; for strong as his situation may be calculated to induce a full sense of obligation, it should also be recollected, that it has often a tendency to obliterate the distinctness of memory and perception, and especially if suffering under bodily and excruciating pain; and hence, Mr. S. said, it was to the last degree important to ascertain the degree of the party's observation and recollection. It was also important, to discriminate and ascertain whether the declarations related to matters of judgment, inference, or deductions, rather than *facts*, which were often so fatally erroneous. So, too, all circumstances of confusion or surprise connected with the object of the declarations, ought to be considered with scrupulous attention, both by courts and juries. The accordance and consistency of the fact related, which the other facts established in evidence, were also to be examined with great circumspection, and the awful consequences of mistake, must, as had been said by able Jurists, add their weight to all the other motives, *for declining to allow implicit credit* to the narrative, on the sole consideration of its *being free from the suspicion of wilful misrepresentation*. This was clearly the law. The question then for the court to decide, Mr. Stevenson said, was this; whether the deceased was in the situation and condition that the law requires, to let in his declarations as evidence in this case. Was he *in articulo mortis*, when the supposed declarations were

made? Did he feel and believe that he was in a dying state? Had all hope of living fled? Was he calm, cool, and collected, and in full possession of his mental faculties. Were the supposed declarations made under a firm conviction of approaching death, and in full expectation of answering at the bar of God for their correctness and truth? If so, then Mr. S. said, he admitted (if any declaration of a man not under oath, or present, could be evidence in a trial for life and death in this country,) that the court might admit them here, to go to the jury, and to be weighed by them. If they were not so made, then they were to be excluded.

The next inquiry was, if they are to be admitted, how are they to be restricted and limited? On this branch of the case, and as Mr. Taylor had laid down correctly and ably the rule—Mr. S. would add but a word.

The declarations were to be restricted alone to cases of homicide, made after the *mortal blow* was given, and confined alone to the fact of the blow and the circumstances of the killing. The authorities on this point, Mr. S. said were conclusive. [He here referred to and read various authorities from *Russell on Crime*, 2 *East*, *Johnson's Reports*, and cases reported in the English Common Law Reports, some of which had been referred to and commented on by the Commonwealth's attorney.] Mr. S. then proceeded to say that the reason of the rule for the admission of this secondary evidence, was in favor of its being limited to the *manner and circumstances* of the *death;* to the *mortal blow*, at the time it was given, in such cases as the one at the bar. It was never intended, he said, to be applied to circumstances *preceding or succeeding the mortal blow* —to go beyond the *res gestæ*. It was never intended to come in aid of other evidence and proof of killing, where third parties were present, capable of testifying. Such a construction would be at war with all the reasons alleged for the adoption of the rule, and every principle of justice. The reason of its being received in Vass' case, was expressly upon the ground that there was *no competent witness present when the mortal blow was given by the prisoner in his own house*. If there had been other evidence, it is evident that the declarations of the dying party ought not to have been received, and would not have been, as evidence. When the reason of the law ceases, the law should likewise cease. *Cessante ratione, cessat et ipsa lex.*

This rule must therefore, Mr. S. said, be restricted, and not enlarged. Whenever there was other evidence of the killing, the declarations of the deceased party ought not to be admitted. And such, Mr. S. said, was the case they were now trying. There was ample evidence as to the fact of the rencontre, that the deceased was killed by wounds received from pistol shots fired by the accused. Why then receive the declarations of the party killed? They had therefore a right, Mr. Stevenson said, to ask the court, in the first place, to decide, (if the Judge felt himself bound by the decision of the General Court,) whether the deceased was in such a situation as to let in the declarations made after he was mortally wounded and removed to Richmond. And second, if they they were to be let in, then to limit them to the mortal blow, and what took place at the time of the conflict between the deceased and the accused. No other declarations ought to be allowed to go to the jury. That such would be the decision of the court, he would not, Mr. S. said, permit himself to doubt.

The arguments on both sides having been heard, the Judge delivered his opinion.

By the Court.—The question of admitting the dying declarations of a person was elaborately discussed at the last term of the General Court in Hunter Hill's case, and it was decided that they were admissible There, therefore, is no doubt about the admissibility of such declarations; but their admission depended upon the circumstances of each particular case. It must appear to the Court that the declarations were made under a solemn impression that the party would not recover. They are applicable only to the criminal facts charged in the particular case. The competency of one witness to prove the same facts which the dying declarations would tend to prove, is no reason for excluding them. I have no doubt that they are only admissible in cases of homicide. They must only refer to the causes producing the death, and must not go into collateral issues. It is not competent to give in evidence any declarations the person may make about other matters than the causes of his own death. I do not, however, understand that the rule limits the declarations to the mere fact of giving the blow, but may properly extend to all the circumstances from which that fact may be drawn as a legal conclusion.

In the case of Hunter Hill, the declarations were made by the party before the physician saw him; he never expressed a fear of immediate death, at any time. The physician said he was slightly wounded. He, however, expressed fears that he was seriously wounded, and would not get well. In that case, the declarations were decided to be admissible.

I think the dying declarations are to be admitted here; but nothing not connected with the *res gestæ* is admissible.

The dying declarations having been decided to be admissible, Mr. Taylor, on behalf of the counsel for the accused, said, "We will save the point, if necessary."

DR. WARNER, *Examination resumed.*

By the Prosecuting Attorney.—I understood you to say that Mr. P. considered himself mortally wounded before he left the field?

A. Yes; he conversed with me about the manner of his death. He made some declarations of his belief on that subject. He retained the impression that he would not survive, until his death. His remarks were suggested by questions which were addressed to him.

I saw the sword-cane as I passed off the field, and observing that the blade was bent, I asked him how it had been bent? He said it was bent when he thrust at Mr. Ritchie. I remarked that I saw him several times stabbing at Mr. R., and wondered at his not killing him. He replied, that he thought he had run him through twice. Immediately afterward, I said to him that from the manner of Mr. R.'s leaving the ground, my impression was that he did inflict a mortal wound. His answer was an exclamation, "Ritchie is a brave fellow." That is all he said.

These remarks were made about fifteen minutes after Mr. R. had left the ground, and whilst Mr. P. was lying down. We then carried him to the toll-house, and then I examined him. I took out a revolver from his coat pocket. It appeared to be an ordinary revolver, had six barrels, and none of them were discharged.

He inquired of Mr. Deane and myself why we called on him to stop. He said he heard Mr. Greenhow and Mr. Archer cry out, and he also heard Mr. Deane and me. Mr. Deane stated to him the reason of our crying out to him to stop. Mr. Pleasants said "it was too late then; I was advancing." During our ride, Mr. P. was extremely faint, and said again and again that he believed himself mortally wounded. Once, he said he did not believe he would get home. He urged me to tell him what his situation was. After dressing his wounds, I left him. In conversing with him afterwards, I avoided talking about the matter. On Thursday evening, about 6 o'clock, I visited him, in consequence of a message having been sent to me, saying he was worse. On my way, I was told by a gentleman whom I met, that he had made some communications to Mr. Deane concerning one of the gentlemen who were on the ground. Upon arriving at his house, I found him rapidly sinking. After conversing with me about his condition, he called me to his bed-side, and asked me to explain how he received the wound in his hand. I held up my hand, and described the manner in which the ball entered his hand. I said to him that it was a singular direction for a ball to pass—that it could not have entered the hand except from behind. I asked him if he seized Mr. R.'s pistol? He said no; but afterwards he said that Mr. R. did put his revolver to his face, and that he had seized on it. I had heard various rumors in the streets. One was, that he had requested Mr. Ritchie, after Mr. R. had drawn his sword, to desist and not stab him. I asked him if he had said so. He said no. I asked him if he could tell why Mr. R. did not kill him. He said he did not know why; he had not asked Mr. R. not to do it. Then, I asked him why, with his second pistol directly against Mr. R.'s breast, he did not kill him when he fired. He said, rather impatiently, "there was no ball in the pistol." I replied, the pistol was loaded by another person. He said, "Yes it was, but I withdrew the ball." I then asked him when he had done so? He said, in his room, whilst Mr. Archer had gone out. I asked him how? He said in the usual manner. I asked him what was that? He said, with a screw. I then said to him, what was your intention in going upon the field, as you had taken out one of the balls; did you not go there to kill Mr. R. if necessary to protect your life? He replied, I did not want to kill him; I went there to show him that I was not a coward. He then stated that the only remark he made to Mr. R., when close up to him, almost in contact, was "I came here to show you I am not a coward, and you now see it." I then asked him what was his object, as he did not intend to kill Mr. R., in not drawing the other ball. He replied, "I wanted to hold him in jeopardy, and I wanted him to know that I had him in jeopardy." These may not be his exact words, but they contain the sense of what he said. I think it was then that I said to him I had been requested to ask him whether he heard any one, at the time he was in conflict with Mr. R., direct Mr. R. how to assail him.

Mr. Stevenson.—That is not evidenc

Mr. Taylor.—No; it is not evidence.

Mr. Flournoy.—I submit that it is a part of the *res gestæ*?

Mr. Taylor.—We submit whether Mr. P's statement of what a third person said to Mr. Ritchie is to be considered as evidence?

Mr. Flournoy.—I presume that any direction given to any person on the field is part of the *res gestæ*.

Mr. Taylor.—We hold the converse of the proposition.

By the Court.—I think that it is proper evidence to give in any thing which constitutes a part of the *res gestæ*.

Mr. Taylor.—We will save the point, if necessary.

Dr. Warner proceeded with his testimony. Mr. Pleasants replied that Mr. Scott was behind the tree and told Mr. Ritchie when to shoot and when to draw his sword. Mr. P. said that Mr. Scott said "shoot now; draw your sword now." The testimony about Mr. Scott saying "shoot higher—shoot lower," reported to have been given by me at the coroner's inquest is inaccurate, as published in the newspapers. What I have now said is all that Mr. P. said he heard. I left Mr. P's house about eight o'clock, and returned a little before eleven. It had then become evident that he could not live till morning. Something was said to me about

the conversation in the earlier part of the evening: I am not sure but that Mr. Macfarland introduced the subject. I then told Mr. P. that I had no fear about communicating to him the fact of his approaching death—that I was sure that a man who had acted so bravely on the field would not fear the announcement. I told him that he could not live beyond night, and that I would propound some questions to him, for a reason which he would understand. He said, "I understand you perfectly." Then, I recurred to the questions I mentioned before, with one additional remark. I asked him the reason why he took the ball out of one of his pistols without taking it out of the other. His reply was the same as before. I asked him one additional question, "Did I not understand you to say that you thought you had run Mr. R. through twice?" He said, yes he had said so, and he thought so. In reference to Mr. Scott, I rather think I did not ask him any thing in that conversation.

Mr. Taylor.—I understand you to say that the questions you asked Mr. P. in the fore part of the evening were the same as those in the latter part, except that about Mr. Scott?

A. Yes. I laid stress on the question about his running Mr. R. through. I had no further conversation with him. I stated to his friends that he was dying, and that his family should be brought down. His mother and daughter were brought down to see him.

Mr. Flournoy.—Was Mr. P. in his senses?

A. Perfectly so. He was never for one moment incompetent to have done any act of a sane mind.

Mr. Taylor.—Was there any wandering of mind?

A. Not till after his last interview with his mother.

Q. When was that?

A. About 12 o'clock. He lay quiet, and recognized every one who approached him.

Q. Were opiates administered largely?

A. Yes; but he was never in a narcotic condition.

Q. Were you present at his death?

A. No. He died at two. I left a quarter after one.

Mr. Stevenson.—Did he die gradually?

A. No: he sank rapidly from early in the afternoon till I left him.

Mr. Taylor.—Is it true that Mr. P. when he told you he had drawn the ball from one pistol, said he did not wish the fact to be mentioned if he recovered, but to be mentioned if he died?

A. No, sir. He was never the man to make any such remark.

Mr. T.—I asked the question only, because it was so reported.

A. Yes: many things were reported which were untrue. I believe I have given you every remark he made.

Q. Do you remember that Mr. Pleasants said at the toll house, or at any other time, that his pistols were badly loaded?

A. I remember hearing him say while on the ground that his pistols were not well loaded or were badly loaded.

Mr. Jones.—Did Mr. R. ever move a step on the ground?

A. Yes: he moved back.

Q. After Mr. P. passed him, did he change his position? Did he ever move from the place first selected?

Q. I first saw Mr. R. just above the oak tree. I saluted him. Soon, he stepped out and took his position about the time that Mr. P. was arming. I saw him during the rencontre step back a little.

Q. Was that ground lost; or did he go back under the blows of Mr. P?

A. It seemed to be from the constant pressing on of Mr. P. I did not suppose that he was retreating.

Q. I understood you to say that you advised Mr. P. not to pass Mr. R., when he was coming on the field?

A. Yes: because as no terms had been agreed on for commencing or carrying on the combat, Mr. R. might take it for granted that Mr. P. was advancing to attack him. Mr. P. said. "Oh, no."

JAMES McGEE, *Examined.*

Mr. Flournoy.—State all you know with respect to the charge against the prisoner?

McGee.—On Wednesday morning, as I went to work, I saw a hack in the street. I was told—

Counsel for the accused.—State what you know and no more.

McGee.—The impression was made upon my mind that Mr. Ritchie and Mr. Pleasants were going to fight a duel. I ran up the canal, and the first person I saw was Dr. Warner, whom I knew. I passed two or three persons more. I recognized Mr. Greenhow. I passed a gentleman, I have since understood was Mr. Pleasants: I think he was standing near the oak tree; I did not know at that time that it was Mr. Pleasants. I saw a gentleman in a cloak walking towards the foot-bridge, I passed all the parties, and went beyond the oak. I became satisfied that there would be no fight, and that was what carried me back? When I got back, I heard a report: it seemed to be double, and I thought two pistols were fired at the same time. My attention was called to it, and I looked that way and saw three persons. One of them was coming down, and one was standing in the middle of the road. I ran a a few steps, and then I heard another report. I stopped, thinking I might be in danger. I saw the gentleman coming down, and when he got within about thirty yards of the one below, he fired. I saw the blaze of the pistol. I heard two reports before that. At that time, I saw a fire from the gentleman on the lower side. The gentleman up the canal continued to advance, and when they got about three yards apart, he fired again.

Q. How near were you at that time?

A. I was about sixty yards from the cotton factory. Immediately, the gentleman below commenced firing again. Then the one above struck him with his cane: I saw the top of the cane. I saw the one on the lower side fall back a little on one side, and then he drew his sword. The next thing I observed, was the gentleman with the sword-cane. I saw the blade of the sword. I did not see him strike any lick with it. As the gentleman was coming up, I saw him drop his arms. Three gentlemen came up to him and took hold of him. He fell upon his back, and then turned on his side. I saw Dr. Warner. He asked me what I wanted; I asked if he was much hurt, and the Doctor said there was no danger, except from the nerve of the hand. At that time, Mr. P. pulled out a bowie knife, and threw it aside, and said, "take the d—d thing." Mr. Archer took it, and asked me for some brandy. I went after some, and got it from Mr. McRae's. There was some talk about getting a plank to carry Mr. P. away upon; but none was got, and Mr. P. got up and walked away. It was not sunrise when I first saw the parties, but some twelve or fifteen minutes before.

Cross-Examined.

I was much confused when the fight was going on. The first report was either from two pistols, or a loud report of one. At the time of the second fire, the gentleman above, staggered a little one side, and appeared about to fall. I saw him fire his second pistol, after I first heard the reports.

Q. How many reports were there in all?

A. I think seven or eight. That was the impression on my mind at the time. (Here the witness recapitulated a portion of his evidence.) I thought that the gentleman below would have cut the other one in two with his sword: he could have done so as easy as let it alone.

Mr. Taylor.—Did Mr. R. give a blow with his sword?

A. No: he only used it in warding off the blows of the other gentleman.

Q. Juror. (Gregory.)—Did you think Mr. Ritchie could have killed Mr. P. with his sword?

A. Yes: I was astonished that he did not do it.

Mr. Stevenson.—Did you see Mr. Ritchie coming away?

A. Yes: he had blood on him.

Mr. Flournoy.—Did you hear a ball strike the cooper-shop?

A. No: I heard there was a bullet there; I have not been there. I never had the idea that I could see a ball, or hear it either. The mill was at work, and I could not hear. I have never heard a ball whistle, and that was not a good place to hear it.

Mr. Taylor.—What was Mr. Ritchie's appearance?

A. He was pale and bloody.

Q. Was he exhausted?

A. He walked as well as I ever did, and could run a little bit, too.

Mr. Jones.—Did you see Mr. P.'s sword after the fight?

A. Yes. It was either lying on the ground, or in somebody's hands. It was bent. It seemed to be bent in the bow fashion. I could not account for its being bent.

The Court then adjourned.

THURSDAY, APRIL, 2D.

DR. P. W. BROWN, *called and Examined by the Prosecuting Attorney.*

On the evening before the affair, about 10 or 11 o'clock, Mr. Greenhow called upon me, and asked me if I would visit a patient for Mr. Ritchie the next morning. I said I would do so. He also told me to put a case of instruments in my pocket. The next morning before day, I was called for in a carriage, and was driven over to the Manchester side of the river. I remained in the carriage, whilst the other parties got out. After 10 or 15 minutes I heard a report, and then several others in rapid succession. I looked, and saw one man fall. I got out of the carriage, and saw Mr. Ritchie running toward the carriage. He had lost his spectacles. He requested me to examine him, and see if he was wounded. I did so, and found that he had no wound except a slight one upon his lip. We drove over the bridge to the Richmond side of the river, where I got out of the carriage.

Mr. Flournoy.—Who were in the carriage?

A. Messrs. Greenhow, Scott, Ritchie and myself. I think it was between 5 and 6 o'clock. I could not tell precisely what time it was. I had not seen the sun rise for several months. I could not tell what was the distance between the parties, when they fought. I thought one of them had on a white coat.

Q. What passed when Mr. Ritchie returned to the carriage?

A. I examined Mr. Ritchie, and found he had only a small cut upon the lip.

Q. What kind of an examination did you make?

A. I examined his body, his face and his legs. I opened his vest, and examined his chest. There was not much blood on his face.

Q. How many reports did you hear?

A. I cannot say. There were more than two. They were in rapid succession.

Q. You saw a person fall?

A. Yes. When I saw some person running down the slip of land, I advanced and found him to be Mr. Ritchie. He had lost his spectacles.

Q. Did Mr. R. request you to examine him?

A. Yes: I think he did.

Q. Did Mr. R. say he thought himself wounded?

A. I do not recollect.

Q. Did he appear much exhausted or not? Did he run fast or slow?

A. It was very dark, and I did not see him well. When I came up, he was then running slow. The firing had ceased when I ran up.

Q. How far before you met Mr. Ritchie?

A. I do not recollect the distance.

Q. How far off were the other parties?

A. I saw a mass of persons near the tree.

Q. Was any person between them and Mr. Ritchie?

A. Yes; there were some negroes and some young girls from the factory.

Q. Did Mr. R. go to the carriage without stopping?

A. Yes: I returned with him to the carriage.

Q. Was there any conversation after your return to the carriage?

A. Mr. Greenhow said to Mr. Ritchie—

Mr. Taylor, (interrupting.)—That is not evidence.

Mr. Flournoy remarked that Mr. Ritchie was present.

The witness then proceeded:

Mr. Greenhow said to Mr. Ritchie, familiarly, "Tom, we have done everything in our power to prevent the affair, and he would fight." No other conversation took place, that I recollect, till we got to Richmond.

Mr. Flournoy.—Did Mr. Ritchie say anything about the last fire of Mr. Pleasants?

(Here some conversation ensued between the counsel on the subject of "leading questions." The witness was, however, permitted to answer.)

A. I never heard Mr. R. say anything about Mr. P.'s last fire.

Cross-Examined.

Mr. Stevenson.—What kind of a wound was Mr. Ritchie's?

A. It seemed to have been done with a sword-cane.

Mr. Jones.—Was there any contusion about the head?

A. None that I can recollect.

Q. Was there blood on the face?

A. Yes. It was smeared over the face.

Mr. Overton.—Did you see Mr. Ritchie's hat?

A. No, I did not. When Mr. R. came to the carriage, he had no hat.

Mr. Jones.—What distance had Mr. R. run when you met him?

A. I cannot say. It was nearer to the factory than to the tree. It was an exciting time. It was rainy and disagreeable, and the ground was slippery.

Q. Did Mr. Ritchie continue to run from the time you first saw him until you met him?

A. He did.

Q. Did he appear fatigued?

A. Yes; and knowing him to be weak, I asked him to take my arm.

Mr. Flournoy.—Did you see him when he first began to run?

A. No: He was running when I first saw him.

Mr. Stevenson.—Mr. R. is an officer of the Artillery Company?

A. Yes: a Lieutenant.

Mr. Flournoy.—Is he a Lieutenant now?

A. I was told that he had resigned—

Mr. Jones, (interrupting.)—State nothing that you understood.

Witness.—I have not been to a meeting of the company for some time.

Mr. Stevenson.—Mr. R. was out on the 23d at the head of his company?

A. Yes; he was out—about the middle of the company.

Mr. Flournoy.—Who is the Captain?

A. Mr. T. H. Ellis.

Mr. Overton.—Do you not know that running fatigues Mr. R. very much?

A. I have been with Mr. Ritchie upon flying artillery drills. I have seen him much fatigued by a drill.

PLEASANT BOWLES, *Examined by the Prosecuting Attorney.*

Mr. Flournoy.—State what you know with respect to the charge against the prisoner?

Witness.—On the morning of the 25th of Feb., as I was on my way to Richmond, and had got near the cotton factory, I heard firing up the canal. I cast my eye up that way, and saw some person running I remarked to some one: "Are those men up there shooting robins so soon?" Some one said, that fighting was going on. I heard several reports, and after they ceased, I saw two gentlemen coming down the canal. They passed me. One was bare-headed, and supported by Dr. Brown. I saw Dr. B. unbutton his dress. His face was bloody, particularly about the mouth. He looked pale. He seemed weak, and I supposed he was badly wounded. He went into the carriage; I was near and saw all the gentlemen get in. I looked to see if there was anything in his bosom; I saw nothing. I heard some one say, "drive off, drive fast." They did drive fast. I saw nothing more.

Q. Did you see any arms?

A. Yes, I saw several pistols and a short sword. I saw some gentleman have pistols and a dirk or bowie knife, or something of the sort, in his belt, when he got in the carriage.

Q. You say you saw pistols and a bowie knife or dirk around the body of one?

A. Yes, and a short sword.

Q. Mr. R. was pale and weak?

A. Yes, and was assisted by a gentleman. I thought he was badly wounded.

Cross-Examined by Counsel for the Accused.

Q. Was this after the rencontre?

A. Yes; what I saw was mostly after.

Q. Were you not nearer the ground where the fight occurred than the factory?

A. No.

Q. Was Mr. R's face very bloody?

A. Yes.

Q. How was he walking?
A. On Dr. Brown's arm.
Q. Did you see him coming down before Dr. Brown met him?
A. Yes.
Q. How was he moving?
A. He was travelling pretty piert.
Q. Where were you then?
A. Not higher up than the gate of the factory.
Q. You say Mr. R. was moving fast?
A. Yes, in a slow run.
B. Did he not move on as well and as fast before he met Dr. Brown?
A. Yes.
Q. Then the aid retarded his progress?
A. Yes.
Q. How near was Mr. R. to the factory when Dr. B. met him?
A. Forty or fifty yards above the factory.
Q. You saw the sword?
A. Yes. It was the same kind as that, (pointing to an artillery sword on the counsel's table.)
Q. Did you see a bowie knife?
A. No. I never saw one.
Q. Would you know one?
A. No.
Q. Was not what you saw in the belt the same thing you have been accustomed to know as a dirk?
A. Yes, I think so. The pistols were large. Some might be trooper's pistols, they were so large.

Direct Examination resumed.

Pros. Att.—I did not understand you to state how Dr. B. took hold of Mr. Ritchie's arm?
A. I did not see how he took hold.
Q. Did Dr. B. have his arm around Mr. R?
A. Yes, sort o' around him.

DR. P. W. BROWN, *recalled.*

By the Defence.—Was Mr. Ritchie's arm in yours?
A. Yes, Mr. Ritchie's arm was in mine.
Q. You said the ground was slippery?
A. Yes, as far as I went.
Q. Was it fatiguing to walk over it?
A. Not to me.
Q. Was it to a man who had come two hundred yards?
A. I cannot say.
By the Pros. Att.—Was there ice?
A. No. There was a drizzly rain.

CALVIN REDFORD, *Examined.*

By the Prosecuting Attorney.—Were you near the factory when the fight took place?
A. Yes. I was going to work. I saw a gentleman up the canal. I asked Mr. McGee what they were going to do? He said he believed they were going to fight a duel.
By the Defence.—Only state what you know.
Prosecuting Attorney.—Did you hear firing?
A. Yes. I heard a ball strike the stable on the canal bank.
Q. Was it a stable or a cooper shop?
A. I do not know which. It was a new house over there.
Q. Did you ever see where the ball struck?
A. Yes: last Sunday. There was no ball there. The ball struck the house on top. I never went to see the house before last Sunday. The ball was not in the wood then. It had the appearance of having glanced off. It cut out a little piece of wood. The house is on the Manchester side of the canal; on the left hand from the factory.

CHARLES STEBBINS, *Examined.*

By the Prosecuting Attorney.—Did you see Mr. Ritchie on the morning of the fight?
A. Yes; on the cars.
Q. Where did he get on?
A. About a mile from the depot, near the Baptist College. It was in the neighborhood of Belleville, and near Judge Carr's place.
Q. Did you hear Mr. R. say any thing about the combat?
A. I had no conversation with him on the cars: on the boat I had some conversation with him.
Q. Did you hear him say any thing about Mr. Pleasants' last fire?
A. He mentioned to me that Mr. P. had advanced so close to him when he fired his last fire, the powder burned his face, and it was a mystery that he was not killed.
Q. A mystery that Mr. P. did not kill him?
A. Yes.

Cross-Examined.

By Counsel for the accused.—You say you had no conversation with Mr. R. on the cars?
A. None on the cars, except that he said "good morning" as he passed in the cars.
Q. Did you know of the rencontre when you left?
A. There was a flying report about it, which I heard while passing from my house to the depot.
Prosecuting Attorney.—That was on the morning of the combat—at what time?
A. It was about 8 o'clock.
[Here some questions were asked as to the exact distance the cars had proceeded from the depot, when Mr. R. got in. The witness was unable to say what was the distance.]

PETER JEFFERSON ARCHER, *Examined.*

By the Prosecuting Attorney.—Do you know whether P. was skilful in the use of rifles and shot guns?
A. I think that he was skilful in the use of the shot gun. He was skilled in shooting on the wing. I have been on a hunt with him. I do not know anything about his skill in sword exercise. He was not a military man. I have known him 25 years.

Cross-Examined.

By Counsel for the defence.—Do you know whether or not you discovered that Mr. Greenhow transferred his arms to Mr. Scott?

A. I do not know.

Q. Had he any visible arms when with you at the tree?

A. No.

Q. Had he arms before that?

A. Yes; but I saw no arms on him afterwards, when he was with me.

Q. Did you know that Mr. P. heard the call of yourself, Greenhow, Warner, and Deane?

A. I know that he heard the call of Mr. Greenhow and myself.

Q. Did the other two call?

A. Yes. And I have no doubt he heard.

Q. Did he still proceed after he was called to stop?

A. Yes. He signified his unwillingness to to stop by shaking his head.

Q. How far was he from Greenhow and you?

A. I cannot say. He may have been between 30 or 40 yards.

Q. Was not the call to stop continued until the fire of the first pistol?

A. No, I think not.

Q. How long did it continue?

A. He was three or four times called to stop. The firing commenced soon after.

Q. Is your recollection of the call and the commencement of the firing the same as Dr. Warner's?

A. The firing commenced almost instantaneously after the call ceased.

Q. How far was Mr. P. from Mr. R. at the first fire?

A. At the first fire 20 or 30 yards, as I then thought. Since then I have been to the ground, and now I think they were more, if I can identify their positions.

Q. Was or was not Mr. P. in the power of Mr. Ritchie?

A. I think he was clearly in the power of Mr. R.

Q. Did Mr. R. give him any blow after the combat ceased?

A. I cannot say. They were within a few feet of each other. Both were exhausted; Mr. P. more so. I think Mr. R. might have continued the fight to some extent, but he did not.

Q. Do you recollect Mr. P. having passed Mr. R. in the morning?

A. Yes, very near him; within seven or eight feet.

Q. Was Mr. R. perfectly silent and inactive?

A. Yes; perfectly so.

Q. What position did Mr. R. place himself in, with reference to the two canals?

A. Near the centre of the ground between the two canals. [Witness defined his position on the map.]

Q. Did Mr. P. approach with a pistol in each hand?

A. Yes, they were duelling pistols.

Q. Had he a sword?

A. Yes, a sword-cane. He had a bowie knife in his bosom and a six barrel revolver about his person. He had two cases of arms.

Q. Where did he arm?

A. I think Mr. Deane was mistaken about the place where he armed. It was on this side of the canal.

Q. What was the condition of Mr. P's. sword after the fight?

A. It was bent in two places: a few inches from the hilt and near the point. It was more bent near the point. It was a good deal bent there.

By the Prosecuting Attorney.—Did Mr. P. place any pistols in front of his person except those in his hands?

A. No, he had no arms around his body. Mr. R. had four pistols and also a revolver which I did not see. He had the larger pistols in his belt. I did not see the sword till after the rencontre. He had it drawn when I got up. I supposed it was a bowie knife.

Q. When the first shot was fired, could you judge the direction?

A. I heard the ball, and I supposed it passed between Mr. Greenhow and me. There was a difference of opinion about the time when Mr. P. first fired.

Q. When Mr. P. passed Mr. R. did he do it in a menacing or hostile manner?

A. No.

Q Was he then armed?

A. No, except his sword cane.

By Counsel for the accused.—Was Mr. P. armed perfectly, in view of Mr. R.?

A. Yes.

Q. At the time the fight ceased were the parties nearer the factory than when it commenced?

A. Yes. I suppose they were 10, 15, or 20 feet below.

Q. Did Mr. P. fall very soon after you got up to him?

A. Yes. He turned pale, was much weakened. I took hold of him and assisted him.

By the Prosecuting Attorney.—Is this the sword you saw Mr. Ritchie have? [Shewing it.]

A. I do not know whether he had such a sword as that or not.

Q. Before the combat, was any proposition made to Mr. Greenhow or Mr. Ritchie for an amicable settlement of the difficulty?

A. A proposition was made to Mr. Greenhow.

Q. Was Mr. R. present?

A. No.

Q. Was the proposition entertained?

A. Yes, I thought it was favorably received. Mr. G. said he would see Mr. Ritchie. He did so. Mr. Deane came up, and what else passed was in his hearing and not in mine. Mr. P. was then higher up the canal.

Q. At the end of the combat, was there a call to them to stop, a cry—"stop Pleasants stop Ritchie?"

A. I heard no such thing. I was the first to get up.

Q. Was Mr. P. staggering?

A. Yes, he was oscillating, and would have fallen, had I not come to his aid.

Q. Did you observe the effect of Mr. P's. fire when within a feet of Mr. R.?

A. Yes. Mr. R. seemed to be thrown back as if struck.

Q. Did you see the house struck by a ball?

A. No.

Q. Do you know whether a duelling pistol will carry a ball, point blank, that far.

A. I do not know experimentally.

[Here there was some conversation in relation to the distance which a pistol could carry a ball, the manner of shooting, &c. &c.]

The Prosecuting Attorney then rose and said,—I suppose, gentlemen, you have no objection to the introduction of the correspondence and newspaper articles which preceded the quarrel between the accused and the deceased, and which I have now in my hand.

Mr. Stevenson on behalf of the counsel for the accused said,—We certainly shall not object to the introduction of anything connected with the previous relations of the parties, which you may deem pertinent to the case and desire to introduce, but it must be done on your own responsibility. We shall object to nothing, shrink from nothing. Our wish has been to pursue the course best calculated to render this trial as little painful as possible, connected with the feelings of the living, or the memory of the dead! We can have, therefore, no desire to go back to the original quarrel between the parties, of many years standing, and open afresh wounds, which ought to remain forever closed. To enquire who was the original aggressor, who was in the wrong!—This would require numerous witnesses and much delay. But if it is desired by the prosecution we certainly shall not object, but will be prepared to meet it. But I beg leave respectfully to suggest to my friend the Prosecuting Attorney, whether it is not worthy of consideration, how far such a course as he proposes ought to be pursued with care. In my view, it cannot be material to the merits of the trial, and must be attended with conséquences of the most disagreeable and painful character. We shall, however, object to nothing, but let the responsibility of the proceeding rest with the prosecution.

The Prosecuting Attorney then intimated that he would decline introducing the newspaper correspondence which he had atfirst proposed doing.

P. J. Archer, *recalled.*

By the counsel for the accused.—Do you know whether Mr. P. considered himself under obligations not to fight a duel?

A. Yes.

Q. Did he think this a duel?

A. I think that he thought it was evading the anti-duelling law. I urged on him a duel, in preference to the mode adopted. He refused, and I found there was no way of preventing the fight.

The Prosecuting Attorney.—I hope that Mr. Pleasants' opinions of the law will not be considered evidence.

Counsel for the accused.—No, but we intend Mr. P's impression of his sanction under the law to go to the jury and to have an important influence.

Prosecuting Attorney.—I waive the introduction of other matter, as objection has been made to it. I only wish to examine Mr. Macfarland and Mr. Ellis. They are not here today. They can be examined to-morrow.

Counsel for the accused.—We object to going into the examination of witnesses before the commonwealth is through with the examination of its witnesses.

The Prosecuting Attorney.—Then let the gentlemen call their witnesses.

The witnesses for the defence were called by the Sheriff at the door. None appeared immediately. After a pause, the evidence for the defence was commenced.

Albert C. Pleasants, *Examined.*

By the counsel for the accused.—State if you had ary conversation with Mr. Pleasants after the affair.

Witness.—I had a good deal.

Q. What did he say to you about what occurred on the field?

A. He did not allude to the field till the second day. Some remark was made about the conduct of the friends of both parties; he said that he was to blame, if anybody was, for what happened on the field.

Q. When did he say that?

A. On Thursday night about 11 o'clock. I had no idea that he would die, although he said he would.

Q. He said that for all that happened on the field he was to blame?

A. Yes.

Q. Are you a relative of Mr. P.?

A. Yes.

Q. Were you on intimate and friendly terms with him?

A. I was as intimate with him as a man of my age and standing could be with him.

Q. Did Mr. P. send a message by you to Mr. R?

A. Yes.

Q. What was it?

A. On the first night he asked me where Mr. Ritchie was, I told him he had gone North. He said, "tell him all I told you." He said, "it would be a relief to his feelings." He spoke of Mr. R. as a boy—a rash boy, under the influence of evil counsellors. He imputed the newspaper pieces to evil counsel.

Q. Did he say anything about Mr. R.'s having acted nobly on the field?

A. I do not recollect that he said nobly. He said he acted well, bravely.

Q. Was his object to soothe Mr. R.'s feelings?

A. Yes.

Q. He had no fault to find with Mr. R.?

A. None.

Cross-Examined.

By Prosecuting Attorney.—You say Mr. Pleasants heard that there were unfavorable reports about the conduct of the friends of the parties?

A. Yes, I think so.

Q. And he said he was to blame?

A. He said if they wished to blame any one, blame him.

Direct Examination resumed.

Q. He said he was to blame for what had happened?

A. That was the sense of what he said.

Q. Did you hear Mr. P. say during his illness that his first pistol was badly loaded?

A. No.

Adjourned for dinner.

AFTERNOON SESSION.

W. H. MACFARLAND, *called.*

Counsel for the accused.—During the illness of Mr. P., did he express any opinion to you on the subject of duelling? Did he say whether he had fought a duel?

Prosecuting Attorney.—The opinion of one party about a duel is not evidence.

The question being objected to, Mr. Macfarland was discharged.

JAMES LYONS, *Examined.*

Counsel for the accused.—Will you explain what you know about the controversy between Mr. P. and Mr. R.

Witness.—Mr. Moncure Robinson called at his own suggestion with Mr. Macfarland to consult with me upon the propriety and necessity of my making a publication in reference to the settlement of the former controversy between Mr. W. Ritchie and Mr. Pleasants. Mr. Robinson thought, and Mr. Macfarland also thought, that the recent publications in the Enquirer had reference to the former controversy, and that it would be proper for me to make a statement. I did not understand that Mr. Pleasants sent me any message by Mr. Robinson, but that he came, as he said, voluntarily. He came simply as a gentleman wishing peace between the parties. I was a mediator upon the former occasion. I said that I saw no propriety in making a publication, because I was satisfied that it was not the purpose of Mr. Ritchie to rip up the former controversy, and I believe that if I made the publication it would do mischief, and it would induce Mr. Ritchie to come out and make specific charges and thus render the manner of settlement worse. I preferred not, by an incautious move, to change the attitude of the parties, and perhaps deepen the contest. I was aware of the responsibility of my position and prepared to meet it. I would not in such a matter be governed by any thing but my convictions of right.—Mr. Robinson and Mr. Macfarland coincided in my views and left me. I had received no communication from Mr. Pleasants. There had been no intercourse between us for a long time. Since the fall of '44, there had been only a passing salutation, and since the spring of '45, no intercourse at all. I had received no communication from him till the letter I hold in my hand. On the 24th of February, whilst I was in the Hall of the House of Detegates, I was called out into the rotunda by Mr. Deane—called so for the want of a better name, I suppose, though everybody knows it is not a rotunda—and received this communication, (produced a letter.)

The Counsel for the accused (interrupting.)—You cannot state anything any other person said to you.

The witness refolded the letter and proceeded:

Mr. Pleasants, in his letter, asked me to give him a statement. I stated to Mr. Deane what would be my answer, in substance, and told him that I would write the moment I could, and asked him to communicate it to Mr. P. I was not alone that day. I was all day in the House of Delegates,* and with a friend who came from Louisa to see me on professional business, until 9 o'clock, when some of my friends were to meet me at an oyster supper at my own house. I was with them until one o'clock that night. Mr. Deane was there. He said he delivered my answer to Mr. P., who was satisfied with it, and said it was what he expected, and I might take my time as to writing. The next morning I went into my office to reduce to writing the answer I gave to Mr. Deane. Whilst writing the last sentence, Mr. I. A. Goddin came in, and asked me if I had heard the particulars of the meeting which took place that morning between Mr. P. and Mr. R. I answered, no, and he gave me an account of it, which represented Mr. P. as severely, but not dangerously wounded—Mr. R. slightly, &c. I concluded the letter, and sent it to Mr. Deane, (to whom it was to be delivered,) with a copy of the former adjustment—and now hold copies of those papers in my hand, and will read them if desired.

The Prosecuting Attorney inquired whether the Counsel for the accused had any objection to hearing the letter and statement read.

The Counsel for the accused.—We do not desire to open up old matters.

The witness proceeded to say that he had no previous knowledge or suspicion of the meeting, or of any terms agreed upon.

* Mr. Lyons represented the city of Richmond in the House of Delegates.

[The following embraces the correspondence and matters referred to by Mr. Lyons.

RICHMOND, Feb. 23d, 1846.

MR. LYONS:—While I have not retained *all* the feelings with which I once met you, politically and personally, I *have* retained and do, my entire confidence in your personal and high honor.

I then ask you to state your impressions, your *knowledge* of the manner in which the matter between the young Messrs. Ritchie and myself, was adjusted by yourself and General Pegram, three years ago. This is an *act* of justice, as I conceive, quite as much to you as to me.

Whether *allusion* has or has not been made to the affair, it is a subject of construction. I ask of *you to state the facts of the case*, let the construction be what it may.

Very respectfully, yours,
JNO. H. PLEASANTS.

—

RICHMOND, Feb. 25th, 1846.

SIR,—I received yesterday in the House of Delegates, your note, asking me to state my "impressions" and "knowledge" of the manner in which the matter between the young Messrs. Ritchie and my (your) self, was adjusted by yourself and Gen. Pegram three years ago. My engagements at the moment, and until a late hour at night, were such as to render it impracticable to answer then, but I stated to Mr. Deane, who handed me your note, what my answer would in substance be, and authorized him to communicate it to you. I now give the answer in writing, by communicating to you a copy of the terms of adjustment as proposed, and accepted by the parties, which I think is the only statement of facts, or impressions, proper to be made by me, at this distance of time, and as Gen. Pegram is now in his grave, and as it *is* especially proper in respect to such a transaction, that the written memorial of it, when there is one, should be adhered to, as the only one necessarily above all exception, because it is in writing, and assented to by the parties interested. Such is the case here. The paper is signed by the mediators, and the parties concerned. To all the statements of that paper I adhere, and of course to that one which expresses the opinion that the affair was honorably adjusted.

Allow me to add, that I did not understand, as your note implies, that both the young Messrs. Ritchie were concerned.

Respectfully,
JAMES LYONS.

P.S. The paper now sent, was published in the Whig and Enquirer on the 24th of January, 1843.

—

The undersigned have seen with deep regret the editorial controversy between Thomas Ritchie and J. H. Pleasants, Esq., and with still more pain have learned (not from the principals or their seconds) that a personal conflict between W. F. Ritchie, Esq., and Mr. Pleasants is likely to grow out of it, and believing that it may be avoided and the controversy healed, without compromitting the honor of either gentlemen, we come forward voluntarily, and tender our mediation between them. The article of the 17th of January, 1843, headed "*The Enquirer*," was called forth by that of Mr. T. Ritchie, on the 14th day of the same month, and we are satisfied was the result of a misconception by Mr. P. of the latter article. That article, we believe, was not intended in any manner to reflect upon the personal courage of Mr. Pleasants, or to invade his private character; but had reference to the editorial "bout" between these gentlemen, and to the editorial and political course of Mr. P.; and so believing, we regard the article of Mr. Pleasants as unjustified; though we believe that the implied challenge to the family of Mr. Ritchie proceeded from a generous motive, viz: to announce the personal liability of Mr. Pleasants, if called on, without hostility to the members of the family embraced in it. If our views be correct, and are so admitted by Mr. Ritchie and Mr. Pleasants, we propose that Mr T. Ritchie and Mr. Pleasants so declaring, Mr. Pleasants shall retract his article of the 17th of January, and that Mr. W. F. Ritchie withdraw his challenge which has been accepted by Mr. Pleasants, and those gentlemen be restored to their former relations.

J. W. PEGRAM.
January 20th, 1843. JAMES LYONS.

—

We acknowledge the correctness of the above views, and, accepting the proffered mediation, respectfully accede to the proposals made.

THOMAS RITCHIE.
JOHN H. PLEASANTS.
(Copy) WM. F. RITCHIE.]

Mr. Lyons' Cross-Examination.

By the Prosecuting Attorney.—I understand you to say that from your observation of the correspondence between the parties, you thought the former controversy was not referred to by Mr. Ritchie?

A. Yes, I was satisfied that he did not refer to it. I had no doubt about it, as well from the terms of the pieces, as other facts.

Q. Did you know what Mr. R. referred to when he said—(The Prosecuting Attorney was about to read a paragraph from a newspaper, when he was interrupted.)

The Counsel for the accused.—We do not desire those matters opened.

JOHN A. MEREDITH sworn by the Clerk; but in consequence of a misapprehension as to the party on whose behalf he was called on to testify, he was not then examined.

DR. W. P. PALMER, *examined.*

By the Counsel for the accused.—State whether you had any conversation with Mr. P. after the rencontre.

A. I visited him and sat up with him on the evening of the 25th—th night of the day he received his wounds. I held no conversation with him; but heard remarks from him made to others.

Q. What were they?

A. It would be difficult to give them correctly. His conversation was broken by paroxysms of pain. The first remark I heard him make was, "Where is that fellow?" He was asked who. He replied, Ritchie. He was told that he had gone to Washington. I do not recollect his reply. The next remark he made was the result of an enquiry which was propounded to him in consequence of a suggestion from a gentleman by his bed-side. It was stated to him, that it was a wonder he was not killed on the field. He said the most providential thing was that Mr. Ritchie was not killed. Mr. Pleasants' fever had gone off then. Another remark, I remember his making: he called Mr. Moncure Robinson to his bed, and said "Robinson, I shall die!" He was asked why he thought so. He replied, "Because I never had feelings like I now experience." Mr. Robinson encouraged him, and then went up stairs. Another gentleman took his place. I remained all night. Mr. P. was asked if he thought he had hurt Mr. R. He said he did not know: he did not think he had; he had made several attempts to use his sword-cane, but it was useless; he struck Mr. R. several times over the head. He remarked that he did not see why Mr. R. was not killed. He said his pistols could not have been well loaded. That remark was suggested by another gentleman who said, "Your pistols could not have been well loaded." He spoke some words about his not having loaded the pistols himself.

Q. You say he remarked that he could not comprehend why Mr. R. was not killed, except that his pistols were not well loaded?

A. Yes. The words he used were, "it was the most providential thing that Mr. R. was not killed." They were drawn out by a suggestion that it was a most providential thing that he was not killed. I recollect another remark he made. He said Ritchie was a brave fellow.

Q. Was that remark made after the fever had left him?

A. Yes, his remarks were made mostly after the fever had been very much reduced.

Cross-Examined.

By the Prosecuting Attorney.—I understand you to say that Mr. P. was asked if he thought he had hurt Mr. R.?

A. Yes; he said that he thought not; his sword-cane was useless. He said he struck Mr. R. with the sword-cane over the head or shoulder, I do not know which.

Direct Examination resumed.

Q. What was the suggestion, the reply to which was that his pistols were badly loaded?

A. The suggestion was, "Mr. P. your pistols could not have been well loaded."

Q. The last thing you heard was, "Ritchie is a brave fellow?"

A. Yes.

By the Prosecuting Attorney.—I understand you to say that you did not distinctly understand his words about the pistol being loaded by another person?

A. Yes; other words were said which I did not understand.

S. SUTHERLAND, *Examined.*

By Counsel for the accused.—Are you a gunmaker?

A. Yes; and I keep directly opposite the Enquirer Office.

Q. Can a ball be drawn from a duelling pistol?

A. Not if the pistol be properly loaded. I have tried, and I have never been able to withdraw one. I get it out from the breech. I have drawn a ball from a rifle; but a different kind of instrument is used from that which accompanies a pistol.

Q. Could you extract a ball from a pistol put in with a mallet?

A. No; not with the implements generally accompanying a duelling pistol.

Q. If the ball is put in properly, could it be drawn out without the aid of a vice?

A. No; it could not be done with the instrument usually accompanying duelling pistols.

Q. Are you anything of a sportsman? It is often the case with distinguished gunsmiths, and especially foreigners.

A. I am no foreigner.

Q. Did you ever try to draw a ball from a pistol?

A. I tried last week with two pistols. I did not succeed. I did not know then that I would be asked the question here. I got the balls out by unbreeching. I didn't get them out with the screw, but had to use the vice.

Q. How far will a duelling pistol send a ball?

A. I do not know exactly. I know the U. S. Government requires powder strong enough to send a ball 250 yards. A gentleman who was in the employment of the government, mentioned to me a few weeks ago, the superiority of Dupont's over the English powder. 250 yards is the proof distance; but he said that Dupont's powder had thrown balls 310 yards.

Q. Would you be willing to stand 200 yards and let a man shoot at you with a duelling pistol?

A. No; I would not be willing to stand 500 yards.

Cross-Examined.

By Prosecuting Attorney.—Gentlemen, are you through with Mr. Sutherland ?

Witness.—I am through, sir.

Prosecuting Attorney.—I understand you to say that a ball could not without great difficulty, if at all, be drawn by a screw ?

A. I never knew a ball extracted from a pistol properly loaded, with a screw.

Q. Is there any other screw which would do it ?

A. If you were to carry it to a gunsmith's shop, you could get something that would get it out. I bore it out sometimes. Instruments are always kept at a good gunsmith's shop. It would not do to carry it to a blacksmith's shop. It requires a fine wrench to unbreech it, without injury to the barrel. The best way for gentlemen to make up their minds is to load a pistol and try to draw out the ball.

Prosecuting Attorney.—I never saw a duelling pistol.

Witness.—I would have brought you one, had I known it would have afforded you any gratification.

Prosecuting Attorney.—I made the remark to shew that I knew nothing about duelling pistols.

Q. How far, point-blank, would it carry a ball ?

A. It would depend upon the powder and the loading. The ball, after it leaves the mouth of the pistol, goes so—[Here the witness described by motions of his hand, the manner in which the ball proceeds through the air after it leaves the pistol. The ball goes point blank a certain distance, perhaps 80 yards, and then it has an undulating motion, until it finally falls.]

A Juror (Gibbs).—Why does it go along so, rising and falling ?

A. I am not skilled enough to state the reason. I only know the fact.

COL. JOHN A. MEREDITH, *Examined.*

By Counsel for accused.—Did you see Mr. P. on Saturday evening, or any other day before the rencontre, near the Enquirer Office, and what occurred ?

A. I saw him on Saturday evening, the 21st. I was sitting in my office, opposite the Bank of Virginia, and could see the Enquirer Office. I was taking the deposition of Mr. Woolfolk. Mr. R. G. Scott, Jr., was present. While sitting there, I saw Mr. P. pass, accompanied by Mr. C. M. Smith. Having seen the various publications in the papers, my attention was arrested. I observed him, and saw him pass near the Enquirer Office. He looked in, and then passed down. He met an acquaintance, and entered into conversation. I saw him return, accompanied by Mr. Smith, on the same side of the street. I called the attention of the gentlemen with me to the fact. Soon after, he returned, down the street, accompanied by Jeremiah Morton. We all went to the window and observed him. About Mr. Duval's corner, he shook hands with Mr. M. and parted. I think I saw him pass the Enquirer Office three times.

Q. Is Mr. Smith the former partner of Mr. Pleasants ?

A. Yes. He is one of the Editors of the same paper.

Q. Did you observe that Mr. P. had anything in his hand ?

A. He had a stick. He usually walked with a stick.

Q. Was it a sword-cane, or a common stick ?

A. I do not know. It was under his arm.

Cross-Examined.

By Prosecuting Attorney.—What time of the day was it ?

A. After dinner.

Q. Was Mr. Smith's office in the same part of the street with the Enquirer Office ?

A. Yes—below. Mr. P. halted at the office formerly occupied by Mr. Wickham. He did not go so low down as Smith's office. Mr. P. was next to the wall.

Direct Examination resumed.

Q. Had you not seen Mr. P. at the corner before the evening you mentioned, either in the evening or in the day time ?

A. No, sir.

Q. Which way did Mr. P. go ?

A. My impression is that he went up the street.

Q. Did you know that people were collected in squads upon the street on the 21st ?

A. I was not much out that day ; but I know the general impression was that there would be a collision between Mr. P. and Mr. R.

THOMAS P. AUGUST, *Examined.*

By the Counsel for the accused.—State whether you saw Mr. P. on the 21st of February, where, and how long in your sight ?

A. On Saturday, 21st, I went to Mr. Scott's to take a family dinner. After dinner, I came down with Mr. Scott. I saw Mr. P. and Mr. Maurice Smith standing together at the corner opposite the Enquirer office. I also saw them standing together lower down. Gov. Smith afterwards came up.

Q. How long did Mr. P. stand there ?

A. I do not know how long.

Q. Are you certain it was Saturday, the 21st of February ?

A. It must have been the 21st. As I saw a lady at Mr. Scott's, and half-promised to go with her to church the next day. I did not do it, however.

Q. Was Mr. P's cane a sword-cane ?

A. I do not know Mr. P. generally car-

ried a stick. I was struck with his being at the Enquirer office.

Cross-Examined.

By the Prosecuting Attorney.—Explain the position of Mr. P. in the street?

A. Mr. P. and Mr. Smith were across the main street from the Enquirer office—opposite the clothing store.

Q. Did they pass on to the Republican office?

A. Yes: they passed down. When standing at the Republican office, Mr. P. introduced Mr. Maurice Smith to Gov. Smith, upon which I remarked, Smith—Smith! Smith—Smith! a very poor joke, I admit, but one which we enjoyed and laughed over for the time.

Q. Were there any other persons present except Mr. P., Mr. Maurice Smith, and Gov. Smith?

A. I think one other person. I don't know whom.

W. L. MAULE, *Examined.*

By Counsel for the accused.—Please inform the court whether you saw Mr. P. on the 21st, and what you saw of his motions?

A. After breakfast, I observed Mr. P. about 9 o'clock, at Mr. Duval's apothecary, in conversation with Mr. Meade. He crossed the main street and commenced talking to Mr. Triplett. He seemed much excited. He had a cane in his hand and was moving it up and down. He then went to the corner diagonally opposite, at Mr. Taylor's music store. He remained there five or ten minutes.

Q. Did you see him again that day?

A. No. I saw him on Monday morning. He passed the office of the Enquirer, where I was. I saw him again on Tuesday. He had a different cane. It had a crooked head. On Saturday, he had a hickory stick.

Q. Did he look in the office?

A. No. I did not see him.

Q. Was Mr. Ritchie informed of his being at the office that morning?

A. Yes. I know he was informed of it.

Q. Was he informed that Mr. P. appeared excited.

A. Yes. I told him so myself.

Cross-Examined.

By Prosecuting Attorney.—When did you tell Mr. R. that Mr. P. was looking for him?

A. Between 12 and 1 o'clock.

Q. Where did you see Mr. R.?

A. At the Enquirer office. I told him Mr. P. had been there and was very much excited.

Q. Did Mr. R. remain there all that afternoon?

A. No. He remained there an hour, or an hour and a half.

THOMAS P. VIAL, *Examined.*

By the Counsel for the accused.—Did you see Mr. Pleasants on Saturday night? What did you hear him say?

Witness.—About 5 o'clock on Saturday evening, Mr. Pleasants was walking up and down the street opposite my store. He started from the Star office. He went as far up as Mr. Denoon's, and walked backward and forward for some time. I think he was with Mr. Smith first, and a Mr. Morton afterwards.

Q. Did he pass the door of the Enquirer office?

A. Yes. Twice. He halted and looked in. That night he came to see me. He asked for some apple brandy. I drew between a gill and a half pint. He drank it all, raw. He appeared to be very much excited, and seemed to be drunk. I told him he would kill himself. He asked my advice in relation to the difficulty between himself and Mr. R. I told him that I could not give it, because I was not competent to advise him, in a matter of that sort. He said, he would kill Mr. R., or Mr. R. must kill him. On Monday—23rd instant, (February,) I saw him on the square.

Q. Did he say what was his object in walking the street?

A. He did—it was for the purpose of attacking Mr. R. He said so in my presence, and in the presence of my young man. He said he had taken much from Mr. Ritchie, but he be. d—d if he intended to take as much from the boys, as he had from the old man.

Q. Had you been on intimate terms with Mr. Pleasants?

A. Yes; very intimate. Except last spring, during the political canvass, when I took part against him. He gave me hard words for some time when he met me. Previously, for four months, no two men were more intimate. He was in the habit of taking two or three drinks a day at my house.

Q. Are you not a political friend of Mr. P.?

A. Well I was, but the people in Richmond style me a sort of a Lyons-democrat now.

Q. Have you ever told any one what your evidence would be before you came into court?

By Prosecuting Attorney.—What is the object of that question?

By Counsel for the accused.—Have you any objection to it? (Here there was a pause.)

Prosecuting Attorney.—It is admitted to be an improper question.

Counsel for accused.—Very well!

Cross-Examined.

By Prosecuting Attorney.—You say, you were on intimate terms with Mr. P., but that hard words sometimes passed between you?

A. Yes. There were hard words between us—but they were always given good humoredly, and in a friendly way.

Q. Have you stated all he said on Saturday evening?

A. Yes.

Q. Did he state why he took exception to Mr. Ritchie?

A. Yes. He mentioned the pieces in the Enquirer, published by Mr. Ritchie.

Q. Did Mr. Ritchie have a brown frock coat on, on Monday?

A. Yes, he did. He had on his uniform pants, and he had a hickory stick in his hand. He was on the square.

Q. Did Mr. Pleasants have a sword-cane?

A. Yes: the same he generally walked with.

Q. Was that on Saturday?

A. Yes; he had it when he came to my store.

Q. Do you know it was a sword-cane?

A. Yes; I had seen it.

Q. Have you any acquaintance with Mr. Ritchie?

A. No. I have not been with him more than twice or three times, except when the volunteer companies of Richmond all come together. It was twelve or fifteen months ago when we met.

Q. You say that Mr. Pleasants told you on Saturday evening about the difficulty?

A. Yes. He said he would be d—d if Mr. Ritchie should not kill him, or he would kill Mr. Ritchie.

Q. Did he always put Mr. Ritchie's killing him first?

Counsel for the accused.—Let it be either way.

THOMAS GREEN, *Examined.*

By Counsel for the accused.—Did you know that Mr. Ritchie knew that Mr. P. was on the street, looking for him?

A. Mr. Ritchie told me so.

Pros. Att.—I object to what Mr. Ritchie said about it, being considered evidence.

Counsel for the accused.—We asked what the witness knew.

Witness.—I got to town about 12 o'clock in the cars from Washington; soon after, Mr. Ritchie met me.

Pros. Att.—I object to what Mr. R. said.

By the Court.—It is not competent to introduce the words of Mr. R., but only such things as prove that he knew it.

Witness.—Mr. R. asked me what he should do?

By the Court.—That is not evidence.

Counsel for the accused.—Did Mr. R. communicate to you the fact that he knew that Mr. P. was on the street looking for him?

Witness.—Yes.

The Court then adjourned.

FRIDAY MORNING.

The Court was opened at the usual hour, but was compelled to wait for witnesses. After some time,

WM. S. TRIPLETT, *Examined.*

By the Counsel for the accused.—Were you in the room of Mr. Pleasants, on the night following the rencontre?

A. Yes.

Q. State what you heard in presence of Mr. P.

A. I found Mr. Macfarland and Mr. Archer there. They were in conversation, and Mr. Archer was giving a detailed account of the affair. In doing so, he remarked that it was the strangest thing in the world that Mr. P. had not used his revolving pistol; for if he had, he must certainly have killed Mr. R. I was standing by the fire-place, near enough to the bed to hear what he said. He remarked that if he had used the revolver, all would have been right.

Q. How far is the fire-place from the bed?

A. Not far. In consequence of Mr. P's situation, Mr. McF. and Mr. A. spoke in an under tone.

Cross-Examined.

By Prosecuting Attorney.—You say that Mr. Macfarland and Mr. Archer spoke in an under tone?

A. Yes. I so recollect.

Q. Did Mr. P. hear? Was the conversation loud enough for him to hear?

A. I do not know that he did, except from the answers he gave.

Q. Were his answers addressed to any particular person?

A. No, sir.

Q. Are you certain about the words he used?

A. Yes; they made an impression on my mind at the time.

Q. Was what you have stated, all that he said?

A. It was all that made an impression on my mind. His physicians were unwilling that he should converse.

Q. Did he say why he did not use the revolver?

A. No, sir.

Q. Was he suffering under much pain?

A. Yes; he complained a great deal.

Q. Did you hear Mr. P. say anything about the affair afterwards?

A. I was not at his room after the affair, except that night; and I only remained there about three-quarters of an hour.

Q. Did he speak loud enough for Mr. Macfarland and Mr. Archer to hear him?

A. I presume they might have heard him. I was nearer the bed-side than they.

Here the Prosecuting Attorney proposed to introduce Capt. Thomas H. Ellis as a witness in behalf of the Commonwealth.

The counsel for the accused objected to the admission of his evidence, except as rebutting testimony, on the ground that the Commonwealth had gotten through with its testimony.

R. L. IRBY, *Examined.*

[This witness, who kept the toll-house on

Mayo's Bridge, was examined by the defence to prove particular circumstances in the conversation between himself and Mr. P., after the latter had been wounded. He was very feeble when examined; apparently in the last stage of consumption. Since the trial he has died, without having seen a report of this testimony, and a proper respect for his memory dictates that what he said in the witness-box should not now be published.]

JAMES M. WICKHAM, *Examined.*

By the Counsel for the accused.—Inform the Court of any conversation which may have occurred between you and Mr. Pleasants on the 21st of February, and any thing that may have occurred between you before and afterwards.

Witness.—On the 23d, and not on the 21st, as the question mentions, I had the first conversation with Mr. P., which I suppose is the first subject of the inquiry. It was on the 23d that the celebration took place; the 22d was Sunday; on the 23d February, being Monday, I was on the public square to witness the parade of the troops, and the usual display of a celebration of the 22d February. I had passed along the line of troops to the extreme right, which was occupied by the artillery company of which Mr. Ritchie was an officer. The troops were arranged as usual on the north side of the broad avenue of the square, fronting to the south. The position of the artillery company will be understood by those of the jury acquainted with the locality, by my saying that they were at that end of the square nearest the Washington Tavern. Soon after I had arrived at the right of the artillery company, I saw Mr. Pleasants approaching. He came along the rear of the troops through the trees, where there were few spectators—the crowd being, as might be supposed would be the case, in front. His manner was very striking—all who knew Mr. Pleasants will easily recollect that his usual gait was remarkably slow, with his head depressed, like a man in thought.—On this occasion his head was erect, and his gait quick and manner animated, and his face pale—the paleness of a man under great excitement, and in a rage. I had read the pieces which had appeared from time to time in the newspapers, the purport of which it is not, I suppose, proper for me to mention. It is sufficient to say that having these in mind, I had no doubt of his object in approaching that place. He was accompanied by a young gentleman who I did not know. I was then standing as near to Mr. Ritchie, who was in position in his company, as I am to the gentleman who stands yonder (pointing to a person standing between 20 and 30 feet from the witness.) As Mr. Pleasants was approaching, he discovered me, and came immediately up and introduced his companion.

I immediately and without preface began: "Well, Pleasants, you have selected your time and place admirably. You have come here to assail an officer in presence of his company, when on parade—an officer of the old artillery company—one as little likely, to say the least, as any other, to submit to such an indignity. You have come here when the best part of the population of Richmond is assembled on the public square, the troops displayed, with the capital in front, and the Governor's house thrown open, and all things prepared for a proper celebration of a great national day. You have come to disturb the celebration by committing a great outrage." He answered "No, Wickham, no; public opinion would not sustain it." No, indeed it would not, I said. Here there was a pause between us; for, as will be easily understood, the conversation was not of a nature to be very brisk. After a while, I said, there is but one single circumstance that could afford any semblance of justification to such a proceeding, and that is, that nobody could say that Ritchie is not armed; for all can see that he has a sword by his side. He replied, "That was exactly the course of my thoughts." But, said I, there is nothing in that; for nobody can be so ignorant and stupid as not to know that Ritchie is by this time, armed and prepared for you. After a short silence I said, you surely do not mean to make an attack here; to which he said. "Why no; but damn the fellow, I can't find him." I then said, now, Pleasants, get rid of that idea; Ritchie is not the person to skulk from an adversary. He is as easily to be found as any other man whatever. I think I know Ritchie well enough to say that there is no difficulty in finding him if sought at the proper time and place; however unpleasant it may be to you to hear it, I tell you he is to be found. However correct your opinions about him in other respects may be, about which I have nothing to say, I tell you, you are under a great mistake on this subject. Mr. Pleasants was silent at this; but it seemed to produce some impression on him. From time to time he looked at Mr. Ritchie with inexpressible fury, grinding his teeth, and having all the action of a man infuriated, with his adversary almost in reach. I will not say as to grasping his cane, but griping his fist, and in short all the gestures of a furious rage—so much, that I thought it necessary to interfere. During this, Mr. Ritchie had seemed wholly unconscious of what was passing; but at last I observed him to throw a glance towards us; and from his manner I inferred that he had not been so entirely unconscious of what was passing as I had supposed. After a while, Mr. Pleasants moved away, and I then went up to Mr. Ritchie, and said, You see Pleasants is here; he has come for the purpose of making an attack, but acknowledges that it will not do here to-day and on parade; but you know Pleasants as well as I do, and must judge for yourself. However, I think you had better be on your guard.

I then left Ritchie and walked down the square, through the trees in rear of the troops.

where Mr. Pleasants continued to promenade, and passed him, but the crowd here had increased and we did not speak. I pointed him out to ———, a magistrate of the court, and we had some conversation about the propriety of stopping the thing. After a while, Mr. Pleasants rejoined me and I expressed an intention to call on the Governor. He seemed at first quite disposed to go, saying that 'Extra' (meaning the Governor) and he were great friends, and that he had both kindly and politely invited him to see him. As he seemed to hesitate I left him, and having paid my visit to the Governor, I returned to the square, but to the best of my recollection, I saw no more of Pleasants on that day. On the next day (Tuesday) I went over town earlier than usual, expecting that something might occur. As soon as I reached that part of Main street where is the Exchange Bank and the offices of the Enquirer and Republican, it was at once obvious to one as well acquainted with Main street and the people who frequent it as I am, that something was going on. Small groups were assembled about in that part of the street. I joined several of them, and learned that Mr. Pleasants was from time to time issuing from the Republican office, and parading in front of the Enquirer office. I very soon saw him come out, accompanied by Mr. ———, and proceed up to the Enquirer office, where he stopped for some time. There is a glazed door to the Enquirer office, and it seemed to be understood that one within could see what was passing out of doors. When Mr. Pleasants returned to the Republican office I supposed that he would not make another sally for some time, and went down the street. I suppose it is not proper for me to mention what I saw and heard on the street, but I find it difficult to fully justify my own conduct or to explain that of the parties without such details, still I will endeavor to confine myself to what I understand to be unexceptionable testimony. It seemed to be generally known on the street that this sort of thing was going on. I remember that I raised my stick and shook it at my friend W———, on the opposite side of the street, who shook his at me in return, and understanding the allusion, I spoke to a magistrate on the subject.

By counsel for the accused.—You spoke to a magistrate?

Witness.—Yes.—I returned to the Exchange Bank, and very soon saw Mr. Pleasants again issue from the Republican office and proceed to the Enquirer office, and there stop as before: on this occasion he was accompanied by Mr. ——. He returned, and I continued about that vicinity conversing, &c., until he again issued forth and proceeded as before. On his return, he looked towards me as he passed on the opposite side of the street; I shook my cane at him, when he looked somewhat surprised, as supposing that I had beckoned to him, and came towards me; I again shook my cane at him in a threatening manner, when appearing to understand my allusion, he said "Oh!" and returned, but suddenly changing his mind he came directly across the street to me and said, "Wickham, this is all in d——d bad taste." Why yes, I said, it is rather in bad taste for Richmond, though, perhaps, in Vicksburg it would be quite the thing. He then took me aside into the portico of the Exchange Bank as if to communicate something in confidence, but I soon saw that he had nothing of that sort to say. He began—"Now, this is all nothing to you, you are highly amused at it." Why, I said, Pleasants, I feel exactly as you would if you saw me parading the street in this style in search of an adversary, with all the negroes and children looking on. I am amused just as you would be were your case mine. "Well," said he, "that is true—you and I agree." He was in the habit of calling me a cynic, with various epithets, as imputing to me a disposition to be sarcastic, and as entertaining a worse opinion of mankind than he did: it was a frequent subject of conversation between us. I then said, but where is all this to end? You are armed with pistols. Ritchie no doubt has pistols. *We* shall have pistols going off in the streets—patent revolvers perhaps—some of these children may be killed,—I may be shot myself, for I am determined to see the thing, if it happens before I go up home. And I very well remember saying, perhaps some woman with child standing at a window may be shot. "Now you be d——d; you are trying to torture my feelings." Well, I said, you cannot deny all this to be true, and then I drew his attention to various persons in the street, and especially to some boys and negroes, looking at us. This aroused him greatly, and he said, "d——n it, I can't stand this any longer, let's go to '*Our House*,' and take a drink." As he proceeded over the street, I did not fail to point out to him the notice which he attracted, especially from the negroes and boys, for I found that this sort of talk produced the effect I desired. As we went along the street, our conversation was very earnest, so that we unconsciously stopped more than once on our way. Some gentlemen joined us, and went into 'Our House,' and had something to drink, and sat down awhile, but I soon became impatient, for I was much disturbed by apprehension of the results, and proposed to leave. We went out and crossed Main street, in the direction of Governor street, on which Mr. Pleasants lived. When we reached the corner of Main and Governor streets, I saw three young gentlemen who, I understood, were law students, but as medical students are generally supposed to be more disposed to rows, I said, see, there are three medical students who have stopped to admire you—you are the lion of the day. He gave me a peculiar look, and went off towards his house, and that was the last I saw of Pleasants.

Counsel for the accused.—When you first saw Mr. P., were you attracted by his appearance?

Witness.—Yes; his manner was very different from what it usually was.

Q. Did he give you to understand that he thought Mr. Ritchie avoided him?

A. Yes; I understood him so. We seemed perfectly to understand one another.

Cross-Examined.

By the Prosecuting Attorney.—Your first interview with Mr. Pleasants was on the 23d February, on the square?

A. Yes.

Q. Did Mr. P. say that he meant to attack Mr. R.?

A. No, not in terms; but I understood him so to mean.

Q. Did he have a stick?

A. Yes, a rather neater stick than usual. A mahogany-colored stick, not crooked at the end, not black. Of these matters, while I speak with much confidence from my recollection, yet I do not mean to be understood as being positive, for my attention was not directed that way.

Q. Had he any other weapons?

A. I don't know. I did not think or speak of weapons on that day. The public disturbance was in my mind. Though as things have fallen out, it is to be regretted that the assault was not then made; for in all probability they would not, in that crowd, have hurt one another much, and there it would have ended.

By Counsel for accused.—Did he deny being armed when you made the remark?

A. No; we understood one another, as men do in conversation: ours was elliptical, as all conversation is.

I forgot to mention that on the second day, as we were proceeding down the street from the Exchange Bank, I said, it is fortunate for you that I am thus somewhat in your confidence, or else I would go to a magistrate and swear the peace against you; to which he replied—"If you did, I would lie in jail till I died. I would not give bail." Ah, I said, you would be glad to get out next day. You would find it no use kicking against the law, you wouldn't hit it. "Well," said he, "I would not give bail."

By the Prosecuting Attorney.—Were you and Mr. P. in the habit of speaking to one another banteringly and jocularly?

A. I have had all sorts of conversation with Mr. P.

By Counsel for accused.—Were these conversations bantering?

A. No. Indeed, no.

By Prosecuting Attorney.—Were you and Mr. P. very intimate?

A. At times, very great intimacy, indeed, prevailed between Mr. Pleasants and myself; at other, great distance and reserve; our tempers were not very compatible. Of late, little intercourse had taken place between us. The interviews I have mentioned were both of his own seeking. He frequently talked to me about his difficulties of this sort, in many of which he was involved, as being the editor of a newspaper. The young gentleman who accompanied him on the square, he introduced me to as Mr. Pleasants, his relation. I understood him to be the son of Mr. Tarlton Pleasants, of Goochland, his uncle.

WM. S. TRIPLETT, *recalled.*

Testified that he met Mr. Pleasants in the street, accidentally, on Sunday; he had a stick in his hand.

P. J. ARCHER, *recalled.*

Testified that he was absent from Mr. P's. room during a part of the evening preceding the rencontre, after the pistols had been brought in. Was absent about half an hour. Mr. P. was left alone, with the exception of a little boy who slept in the room.

The evidence was now completed.

Mr. Taylor.—I will remark that the Counsel for the accused are willing to submit this cause to the jury upon the law and the facts of the case. The jury may retire and decide it. By their decision we are willing to abide. But whether willing or not, by it we must abide.

The Prosecuting Attorney (Mr. Flournoy) said: I would gladly save the Court, the Jury, and myself the disagreeable labor of arguing this cause, if I thought I could do so consistently with my duty as an officer of the Court and the Commonwealth. I would not only be willing to forfeit the little compensation which I receive, but to give a sum beyond that compensation if I could be saved the necessity. But in a case of duty, without any person to aid me, to advise with me, to divide the responsibility, if I be in error, I hope I shall avoid what might be considered a dereliction of duty in me. I am distrustful, lest in the progress of the case, I have not done my whole duty in relation to the evidence; and now, however painful and laborious it may have been, I consider it my duty to decline the proposal which has been made.

Mr. Stevenson.—Very well, sir.

THE PROSECUTING ATTORNEY then opened the case for the Commonwealth:

Gentlemen of the Jury,—Although the responsibility resting upon me may be great, that upon you is equally as great, if not greater. It becomes all of us, and you especially, to weigh well the law and the facts of the case, to hear patiently all that is said upon either side, till you can render such a verdict as shall be satisfactory to yourselves now and in all future time. The able counsel on the other side proposed to submit the case without argument, and in doing so expressed a confidence in your judgment with respect to it. I do not object to this. They had a right to make the proposal and I to accept or decline it. Doubtless, they think that they would suffer no disad-

vantage in arguing the case with me, with their array of talent, learning and distinction. Yet they considered the course they have pursued most expedient; and it may, indeed, be a case in which the least said, on their side, is the soonest mended.

I may have gone too far; but let it pass. It is immaterial to the question, but may be proper to remove the impression, if any, which might have been made on your minds by the proposal, and by the manner in which it was submitted. After all, this case is to be tried according to the law and the evidence. You have bound yourselves by the most solemn sanction to that mode of decision.

This is a prosecution for murder charged to have been committed in single combat. If the death of the unfortunate Pleasants did ensue from the wounds there inflicted by the hands of the prisoner, I say that, however disagreeable it may be, it is your duty to find him guilty. It will be the sentence of the law, and not of yourselves.

An unhappy controversy had arisen between these two gentlemen. In the course of that controversy, an insult, the most grievous in its character, had been given by the prisoner to the deceased. The brand of cowardice had been attempted to be fixed upon him. Is there any other insult in the vocabulary of insults more galling to an honorable mind and a lofty spirit than the brand of cowardice attempted to be fixed upon him? What could have been in the contemplation of the prisoner when he made the charge? Did he expect that it would pass unnoticed? Could he have expected otherwise than that some reparation would be sought for such an injury? What was the conduct of the person thus insulted? Immediately afterwards, on the same day, he placed himself where he would most probably meet his aggressor, seeking an opportunity of obtaining satisfaction less likely to prove fatal than the mode finally adopted. He passed the door of the prisoner's place of business several times, but was unable to obtain a meeting. He went where a meeting would most likely occur. He goes there without the purpose of using deadly weapons, but to show his sense of the injury inflicted on him and to resent it by striking with his cane, or his fist, or by some other mode, or by throwing back another insult. If the meeting thus sought had occurred, the termination would probably have been far less fatal; he, however, failed to meet the other party. Is it surprising that he became exasperated and excited? An insult, the most grievous, which no spirit like his could endure, is heaped upon him. He seeks an opportunity of resenting it without shedding blood. Was it surprising that, excited as he was, he used language rash and imprudent? In the evening of the same day, he mentioned to a friend the condition of things—that when the father of the prisoner left Richmond he had made it a point of delicacy to act courteously towards the young men, his sons; that he had failed to obtain a similar spirit on their part; and that they had brought matters to such a pass, that they should either have his blood or he would have theirs. * * * He continually passed about that part of the town where the prisoner usually transacted business, but was unable to meet him. On the square, he is remonstrated with by Mr. Wickham, and his answer shows the condition of his mind. He yielded to the remonstrances of Mr. Wickham, if, indeed, he had before entertained any settled purpose to act otherwise. He says it would be wrong to attack Mr. R. on the square; "but d——n the fellow, I can't find him"—showing that he would not have come there to make an attack if he could have found Mr. R. elsewhere.

It may be said that he might have met with Mr. R.—that he had nothing to do but to tell him where he would meet him. Yes, very true; but Mr. P. may have desired to avoid the pains and penalties of the duelling act. Yes, he showed that he did. Is a man to be driven into a duel? Is a man to be obliged to call another out upon the field? to call him out, whether he is to blame or not to blame? Is a man to have no satisfaction by resorting to the ordinary mode of settling difficulties, by casual meeting, but must subject himself to the pains and penalties of the duelling act and the common law? I say, is that to be the only reparation for an injury like this? Is the man who injures another to offer no satisfaction except in a mode which the injured party is pledged not to accept? Is there no other mode than to expose the party to political disfranchisement, even if he escape the penalties of the crime of murder? And what is Mr. P. told? If he wishes to have a meeting with Mr. R., he has nothing to do but to invite him out.

Mr. Taylor.—I do not recollect that.

The Pros. Att.—Well! only "seek him in in a proper manner, and you will find him:" and he never did find him till he invited him out. I am far from concurring with the opinion of gentlemen that Pleasants had reason to believe Mr. R. would have met him even in a duel; for what assurance had he that Mr. R. would meet him, except Mr. Wickham's opinion? Mr. R. had applied the epithet of "coward" to him: I ask is it not a law of the code of honor that a man is not bound to fight one shown to be a coward? I know little of the code of honor; but I take it for granted, that when the cowardice of a man is established, he is no longer considered a fit subject to meet men of honor on the field of combat.

This matter went on, and still there was no meeting—no opportunity given Mr. P. to seek satisfaction. He is almost taunted for not seeking Mr. R. in a particular manner; and at last he is impelled, under a sense of injury and wrong, to invite Mr. R. to meet him where he did. The fatal message was sent. Is it not a challenge? Is there any prescribed form in

which one man must ask another to the field of combat? Is not a mere invitation sufficient? I apprehend that such is all that even the code of honor requires. That code contains no particular formula of invitation. Even if it did, anything amounting to a challenge, a mere invitation to meet on the field of deadly combat, would be sufficient, whether it corresponded with the formula or not. But the fatal message is sent. It informs the party of the time and place, and leaves him to arm himself as he thinks proper. Is it necessary that the challenge should prescribe the weapons, the distance, or anything except the mode? Does the law require anything as ridiculous and absurd? No, sir, it only requires a previous agreement to fight with weapons calculated to produce the death of either party. The message is sent and the invitation accepted. Will gentlemen say this is not an acceptance, (Mr. R.'s letter,*) although it states five or six, or any number of reasons, why he should not accept? Notwithstanding all his reasons for declining to accept, however wrong he deems it, still the assurance is given that he will be there. That was all that was asked for. Now, what was the purpose of the meeting? Does he go there to make reparation for the injury he has done, except by taking the blood of his adversary, or by offering his adversary his blood? Was it to settle the controversy amicably? No; he went there to take the life of his adversary, and fully prepared to take it. The same evening that the message is sent, propositions are made for an amicable settlement. From whom do they come? How are they received? Mr. Deane applies to Mr. Ritchie's friend to withdraw the epithet coward. What is the response? "Mr. R. conscientiously believes Mr. P. to be a coward." This is the proposition and this the answer of Mr. R.'s authorised friend.

What alternative had this unfortunate man, according to his idea, but to offer up his life or submit to the injury? The propositon was renewed on the field. Archer makes it. Greenhow refers it to Mr. R. Mr. Ritchie refuses to comply. Mr. Deane makes it, and it is repulsed in an aggravating manner. They say to him, "Mr. R. will remain here fifteen minutes and no longer." What is the substance of that? We proclaim you a coward. We have been here fifteen minutes and will remain fifteen minutes more. It is as much as to say, "You are very slow in this matter; we have been awaiting you here, and if you take no step and do not advance in fifteen minutes, we will leave the ground with the brand of cowardice upon you." Before Mr. P. had armed himself, he proposed to substitute more favorable ground, because there were other persons in view. But no concession is made. The reply is, "We have stepped off the ground, and we find it two hundred yards from the factory." Mr. P. may have meant another place more private, between the canal and the river. But no; they had stepped off the ground.

Mr. P. is armed and advances. Did not the prisoner know why? Was it not understood by both parties? Was not the prisoner armed to the teeth to meet the onset? He had four duelling pistols belted around him, besides a six barrelled revolver, and an artillery sword, which, from its weight and particular length, is a most efficient weapon. He was girt about too in such a manner as to protect a considerable part of his person: I do not say for that especial purpose, but such was the effect. Before Mr. P. had used any weapon, before he had fired, the prisoner discharged two of his own pistols. It will be said he had it in his power to kill Mr. P. as he passed up, and again at the close of the combat, but did not do so. Yes; but did he not know Mr. P. passed up without any intention to assail him, then? He could not expect an assault until the other party was armed and the seconds took their positions.

But he did not take his life at the close of the combat, it will be said. Now, it is not exactly certain that he could have taken it, according to Dr. Warner, the most accurate observer of the whole affair. Besides, he had already taken his life by inflicting those wounds of which he afterwards died. He saw him disabled, he saw him falling, and what use was there in taking his life? I apprehend, that sparing his life under such circumstances does not exempt him from the penalties of the law.

But an effort was made to stop Mr. P., and he did not stop, saying it was too late. Would not any person have said it was too late, when he was called on to stop? It is not strange that he considered it too late. For what purpose could he have supposed the call to have been made? A proposition for a withdrawal of the opprobrious epithet had been made the night before, and rejected; renewed that morning, and rejected; and the manner of its rejection was as much as to say, "You are too slow." Possibly, they supposed that he was, in truth, a coward, and would flinch; but when he goes to make the attack, and it is seen he will not flinch, when it is found that he was not afraid to peril his life, then there was a cry of stop, "Stop Pleasants!" Was it strange that he did not stop? Yes, we might well suppose it was then too late. Would he even have been safe in stopping? Dr. Warner is not sure but that the fire of Mr. Ritchie's pistol put an end to the cry of stop. Mr. R. held his position, armed with deadly weapons. Was it then safe for Mr. P. to stop, when the other party had his hand upon the trigger? I think it would have been strange if he had stopped, although I wish he had. It could not have been worse, as the result proved, and it might have saved the dreadful consequences which ensued, and us the pain of going through this case with all its horrors.

He did not stop, and the combat went on—the combat which had been agreed upon

* See page 14.

Could he have been expected to stand, after the door had been closed, slammed in his face? Had not matters come to that pass when he believed that one party must have the blood of the other? Every thing shews that the other parties had come to fight, if Pleasants could be brought to the test, and that they would do nothing but fight. If any thing else, it was to be done to the eternal disgrace of Mr. P. Was this a precisely equal combat? If any advantage was on either side, was it on the part of Mr. Pleasants? Did he have more heavy armor? as great a number of weapons? his body any better protected? any more friends present to aid and assist him with suggestions even in the heat of combat? No; on the contrary, it is proved that the prisoner, instead of a single friend, had two, and one of them gave him directions how to carry on the fight. So said the dying declarations of Mr. Pleasants. Are we to be told that these declarations are not true? What reason is there for saying they are not true? They might have been disproved if not true. A witness might have been produced by the defence to prove whether they were true or not. They did not produce him, and their failure to do so can be accounted for upon no other ground. There was good reason for not calling him on the part of the Commonwealth. He is charged as an accomplice. He might demur to questions, the answers to which, if in the affirmative, would criminate himself; but if he had been produced and could have answered the questions in the negative, he would not by such answers have criminated himself. Gentlemen may argue that the fact is not proved because the Commonwealth did not bring in that witness. Now, I say, if the Commonwealth did not introduce him, there was good reason for it. They had no such reason; and yet they also decline to call him.

There was no advantage on Mr. Pleasants' part. Is it said that the other party stood still? Does that throw the advantage on the side of the adverse party? No; the one who stands still takes more deliberate aim; he even gives back, in order to secure this advantage as long as he can. With respect to the weapons, Mr. P. did use them. The first pistol fired by him (he fired only two) struck a house 200 yards off or more. It seems to me (I have no experience) that the ball thus striking the gable end of a house at a point eight feet higher than the ground, must have been aimed above the head of the prisoner. But this is not very material; nor is it material whether Mr. P's pistol was loaded or not, except so far as regards the truth of his declaration; for Mr. Ritchie had no reason to suppose that Mr. Pleasants' pistols were not well loaded. Can you doubt, however, that the last pistol Mr. P. fired was not loaded? Can you doubt, that at the distance of six or seven feet when it was fired, there was no ball in it? If there was a ball in it, what became of it? What prevented it from taking effect upon the body of Mr. R.? Mr. R. himself, according to Mr. Stebbins' testimony, said that the powder burned his face, and it was a mystery to him that Mr. P. did not kill him at that fire. There is no other solution of this "mystery," except the dying declaration of Mr. Pleasants, that there was no ball in the pistol.

But it is said to be difficult to draw out balls. True, but it does not appear to be always impossible. It is not a thing which cannot be done. Mr. Pleasants declared, under the most solemn circumstances, that he had done it. It is said that it cannot be easily done with the screw which accompanies duelling pistols, nor with such a screw as accompanied Mr. P's pistols. Then, a screw does accompany duelling pistols. The fact is admitted. What is the purpose of the screw? Is it for nothing? Cannot the ball be taken out, as well as put in? I imagine the thing is practicable, is capable of being done, and doubt not that it was done.

But it will be said Mr. P. did attempt to take the life of Mr. Ritchie on the field. Yes, I do not doubt it; but I cannot agree that it was his intention in every part of the combat. He may have changed his purpose. He had been called a coward, had met his assailant on the field of combat, concession had been refused, and it was too late then to put the ball back. Is it strange that he should have changed his purpose? He advanced, shots firing rapidly, and another party crying out to his adversary when to shoot and when to draw his sword. It may have seemed to him that there was a plot to assassinate him. It might have appeared that there was a particular combination to assassinate him. Was it strange, then, that he used his sword? But it will be said that he spoke of his pistols being badly loaded. Is this inconsistent with his other declarations? He may have been disposed not to divulge the fact of the ball having been withdrawn, and yet he may have said that his pistols were not well loaded. There is no contradiction between the two declarations. He may have intended to keep the fact a secret, until he was about to die, and in no other event to divulge it. He may have been induced by a freak or a whim, or from a desire to avoid the shedding of human blood. His motives are not known to us, except from his dying declarations. And is there any good reason to doubt the truth of the declarations of this dying man? Had he not shewn that he was possessed of courage, and was not afraid to risk his life? He established his bravery on that occasion beyond cavil. He also established, for all time to come, another point in his character—that of magnanimity. He did justice to the man by whose hands he fell. Did he say that Mr. R. had not acted well on the field? Did he say any thing against Mr. R., who not only inflicted blows upon him, but long continued to inflict them? He even sent his relative to Mr. R. to tell him that he had acted well on the field; to tell him that the errors he

had committed, came not from the promptings of his own heart, but from the influence of evil counsel. He called him a boy, a rash boy; but on the whole, he considered his message as calculated to relieve the minds of the parties engaged in the rencontre. I think all considered it in that light. Can a man possessing the use of his senses, as Dr. Warner proves was the case with Mr. P., and capable of such magnanimity, be suspected of stating an untruth under such circumstances?

But however that may be, it makes it no more nor less a duel, a single combat fought by previous agreement between the parties. If you, gentlemen of the Jury, are satisfied of that, what is your duty and your plain duty? The law determines that—the law by which we are bound, whatever other opinions we may have—the law whose punishment we must submit to as much as any other. It is impracticable, inexpedient, cruel, against public opinion, should not have been enacted? Suppose it were so; it is nevertheless a law which binds you. But I apprehend that it is a wise and a humane law, and, if it had been observed in this case, it would have saved consequences the most deplorable. It is a law which, as much as any other in the criminal code, challenges the sanction of public opinion. It may not have the sanction of the swordsmen and the duellists; but they, I presume, are not alone to be consulted. Is it a dead letter? No. It was first enacted a long time ago, and has been repeatedly re-enacted since. At every revisal, it has been retained in the code. In the last Convention, it received the express sanction of that grave and distinguished body, which contained, perhaps, as much legal wisdom as was ever assembled in this country. That body expressly recognized the law, and it was re-enacted at the next session of the legislature.

In all its bearings, you will find the crime of duelling regarded as one peculiarly heinous in its character. Even the offence of meditating a duel, of giving or receiving a challenge, or bearing a challenge, subjects the party to disqualifications. The anti-duelling law is not inoperative. It has effected its object as much as any law upon the statute-book. How seldom do we now witness a duel in Virginia. Such are the consequences, that parties go off privately beyond the jurisdiction of the State, when they meditate an offence.

Mr. Taylor.—They are as much within the law there, as here.

The Prosecuting Attorney.—Yes; but there is less danger, and there is more difficulty in procuring proof of the duel having been fought, when the parties go out of the State. The law may be the same; yet they do go out of the State to fight. Every one can recollect all the instances of duels fought within the State since the enactment of the law. I have heard of innumerable arrests of persons committing other crimes in this, and fleeing to other States, but it is difficult to get proof, when the offence itself is committed beyond our jurisdiction. We may send and demand the person, of the Governor of another State; but we cannot demand the witnesses. Those who go out are generally *participes criminis*. The law drives parties as much beyond the jurisdiction of the Commonwealth as possible. What is the law? (Read from the statute.) It is simply an affirmance of the Common Law in this respect. The other part of it depends upon the statute itself—the civil disqualification.—(Read from Russell on Crime, 537.)

It will be said that Mr. R. declined to meet Mr. P. as much as he could. That he assigned reasons why he should not, is very true, but in point of fact he tells him, after all his various reasons to the contrary, tells him, "I will, nevertheless, be on the ground." He may have declared against going, no matter how much; he may not have first commenced the assault; but it makes no difference. The meeting was by previous agreement, and he must be responsible for the consequences. He refused to do anything but fight.

It will be said that the parties did not consider it a duel; Mr. P. was under a pledge not to fight a duel; the accused did not consider it, and that, notwithstanding, he still held his commission in the artillery company of Richmond. Did the Counsel, however, succeed in proving that he still held his commission? Dr. Brown did not at all say whether he still held his commission, nor was there a commissioned officer here to prove that he still held a commission.

Mr. Stevenson.—I asked Dr. Brown if Mr. Ritchie was a Lieutenant, and he said yes.

The Prosecuting Attorney.—I did not pretend to deny that Mr. R. was an officer previous to the fight.

Mr. Stevenson.—Our only object was to prove that Mr. Ritchie, on the square, was an officer.

Prosecuting Attorney.—It is very certain that the gentleman did not prove that Mr. R. continued to hold his commission.

Mr. Stevenson.—Our object was simply to prove that he was an officer on the square, where he was about to be attacked by a private person.

The Prosecuting Attorney.—But suppose the parties did not consider it a duel; does that make any difference? One witness said he thought Mr. P. endeavored to evade the law. Does the law allow evasion? Is it less a duel if the parties get around the law? It was a single combat by agreement of time, place and weapons. A certain kind of arms were excluded by Mr. P.'s message; but the whole vocabulary of side arms were placed in the power of Mr. Ritchie. Because one party excludes some arms, is it any less a duel? Suppose two men have a quarrel, and one says he will settle it to-morrow. One carries a pistol and another a sword—would that be any the less a mutual combat? I submit whether the law is or can be evaded in this manner.

Was Mr. P. learned in the law? Had he read the statutes? Are the opinions of him and the accused to determine what is the law? It is of no consequence what may be the ideas of the parties. The same defence may be made by a man for any crime. If a man is arrested for larceny, he may say it was not larceny that he was going to commit. So with rape and arson. He might burn a house, and then say it was not arson, because he did not consider it a dwelling-house. Are you to be governed by their opinions of the law, or by the deliberate acts of the legislature? The law is laid down by persons versed in it. When individuals expose themselves to its highest penalties, are they the disinterested persons to construe the law? No; the law is settled, and cannot be altered by persons who violate it. The law is made of sterner stuff than that. It is made for all men, and is applicable to all, the high and the low. Is not the highest man to incur its penalties? Is it to be as fetters to the weak, but cobwebs to the strong? Is he who has influence, to break through the meshes of the law, and scatter it to the winds, whilst the poor man is bound down, to suffer its harshest consequences?

No, gentlemen, the opinion of the parties with regard to this law have no more influence than the ravings of a maniac. No matter what they consider it, the law regards the offence as a duel. That law is a humane law. It is intended to suppress, it has suppressed scenes of blood. It is intended to prevent many deplorable consequences which would have ensued had it not been in operation.

As to the law on the subject of duelling, I refer you to the case of *the King* vs. Rice—3d East, 281, in one edition, and 6th, 581 in another. That was a case in which the law was laid down by the Court. It is there laid down that no matter who is in fault, no matter if the deceased was in fault, although the other party did all he could to avoid the act, and accepted the challenge under strong provocation, still he is guilty of murder. It matters not here, whether the accused or Mr. P. was most blameable—and I apprehend that it is far from being established that Mr. Pleasants was most blameable—yet if he met with a view to take life, he is guilty of murder under the law. I have stated what the letter of Mr. R. was. I will read it again. (Read Mr. Ritchie's letter.*) Here is an acceptance of the challenge. He gives strong reasons why he should not except; but he says, in substance, I waive them all; I will meet you there. Did he not say himself it was a challenge—a disguised challenge—a challenge, but not a *proper* challenge. He said he was ready to receive "a *proper* challenge;" but whether ready or not to receive this, he does receive it. Unready as he may have been, and good reasons as he may have had, he does receive it, and accepts it. He says he will be on the ground at sunrise. He speaks of the dangers of the law, but he determines to brave them all, and says, "let the responsibility rest on your head." Yes, could not this be said of all other challenges? You are to take the responsibility. I will kill you if I can, but on your head be the responsibility.

Gentlemen, is the law to be trifled with in this way? Are gentlemen to set up their own ideas of it, and are those ideas to govern you? It is not a *proper* challenge, but a disguised challenge! Yet, I apprehend that is the only construction that could be put upon it. It may be said this was not a proper acceptance, but a protest; and it might as well be said that this is not a proper acceptance, as that the message of Mr. P. was not a proper challenge. No man can stand up here and say that this is not an acceptance to the challenge. Does it do no more than protest? Yes, he agrees to go at sunrise. That was all that was asked, and asked too only by implication. *He then* protests against the form and not the substance. He came. How? Armed to the teeth with deadly weapons, giving to the party opposed to him at least five pistol shots. He was armed with a heavy sword, girt about in panoply, like a sort of coat of mail, and had such an amount of arms as no person perhaps ever went into such a combat with before.

Mr. Ritchie was near-sighted. He may not have had particular skill in the use of fire-arms, and Mr. P. may have had the justice to wish him to exclude arms which would carry ball a great distance. Mr. P. takes two fires before he returns any, and it is not certain that he then aimed at the life of Mr. R. I have no experience; but it seems to me that the ball from his pistol, striking the house eight feet above the ground, passed over Mr. R.'s head. He may, however, be blameable, but it makes no difference who is to blame, so the fact is shown that they meet and fight by previous agreement.

This law, according to my apprehension—if I understand the legislation on the subject, and the opinions of Judges here and in England—is one which Judges and legislators have considered wholesome and humane in its operation. It tends to suppress, check, and smother the darkest and most deadly passions of the heart—the desire of revenge, and the willingingness to imbrue one's hands in human blood upon mere punctilios of what the swordsmen call "honor."

Much of the testimony I have not commented on; but I think I have brought before you all that is material to make out the case.

* See page 14.

WM. M. OVERTON, ESQ., in opening the case for the defence, addressed the Jury as follows:

Gentlemen,—The counsel for the accused were satisfied with the extensive examination which has been gone into. The proposition to submit the case without further delay was made in good faith, and with a firm conviction, that, with or without an argument, nothing but a verdict of acquittal could be rendered. Not only has every material fact been stated by the witnesses, but much has been stated without objection, which was entirely irrelevant to the issue you have to try. On one occasion only did the counsel for the accused object to testimony which the prosecution desired to introduce; and then they were influenced by the fear that a useless, if not endless investigation of newspaper articles would be had, which would consume so much time that a trial at this term of the court would be rendered impossible. In that solitary instance, the objection so clearly valid, was coupled with a permission to the Commonwealth's Attorney to introduce the testimony if he believed it to be evidence proper and pertinent to the issue. He declined doing so. Had these articles been submitted, I am firmly convinced that they would have placed the cause of the accused on higher grounds, if possible, than it now occupies. But, Gentlemen, you have witnessed the liberal manner in which both the prosecution and the defence have been conducted. All the facts have been placed before you. Nothing has been withheld which could aid you in discharging the duty which the law imposes: an unpleasant task which you are now to perform.

To decide between the Commonwealth and one of its citizens, when the subject of investigation is one of the gravest charges known to our laws, is always a source of painful embarrassment. In the present instance, your position is one of no ordinary responsibility. The nature of the unfortunate occurrence which caused you to be empannelled—the relative positions of the principal actors in that tragedy—the character and standing of all the parties implicated, conspire to surround this prosecution with an unusual degree of interest. False and exaggerated statements have been issued from the public press: anonymous letter-writers, not satisfied with distorting every feature, have invented and circulated through the public mails a long catalogue of horrid particulars, and even party feelings have been appealed to, which, ever ready to obey every summons, have lent their powerful assistance in increasing the general excitement. In this situation of affairs the accused has voluntarily come before you, that he might have a fair, candid and impartial examination of his couduct, by a jury of his country; and the whole community now listens for your verdict as for a voice to calm the public mind, and quiet the public excitement. Notwithstanding the trying circumstances under which you have been empannelled, I feel the strongest assurance that you will discharge your duty without fear, favor or affection, and without being influenced by the irrelevant matters which have been dwelt upon here, or biassed by the prejudices which have been excited elsewhere.

In performing my task as one of the Counsel for the accused, I shall endeavor to avoid any line of argument that would inflict pain on the friends of the unfortunate man whose death is now the subject of investigation. It may not be possible to succeed in that: if so, my duty to the accused must over-ride every other consideration. For while I acknowledge in all its force, the beauty of the sentiment that we should say nothing but good of the dead, yet if we allow that feeling to cause us to commit any injustice to the living, we are guilty of a greater crime—a more aggravated cruelty than if we scrutinize closely, and comment freely on the character and conduct of one who is forever beyond the reach of injustice, and can never more be affected by unkindness. The attorney for the Commonwealth, in prosecuting Mr. Ritchie for the high crime with which he stands charged, has thought proper to defend at great length the character and conduct of Mr. Pleasants. It shall be my endeavor to defend the conduct of the one without assailing the memory of the other. I will not pursue an investigation which has been justified, if not invited, further than to ask that the benefit of the remarks which have been urged with so much force by the gentleman on my right, may be extended to the accused. Mr. Pleasants has been pictured as writhing under the epithet applied to him in a public newspaper; and his conduct in conceiving and arranging the terrible affray which you have heard described in all its sanguinary details, has been represented as the natural and spontaneous action of a virtuous man, burning under insult and dreading disgrace. It has been said that he was driven to desperation, and he has been defended, although he resorted to desperate means to avenge his injuries. A man bordering on old age, whose passions should have been cooled by many winters, and restrained by a long life of reflection, finds an apologist in a Court of Justice, for taking vengeance in his own hands: how much more then is he justified, who, stimulated by the strong passions of youth, only defends himself from a deadly assault, which he had avoided in every manner consistent with those feelings of honor which have been so ably defended!

The evidence throws no light on the origin of this unfortunate difficulty. With that matter, you have nothing to do. The declarations of one party constitutes the whole testimony on that point. All we know is that the late John Hampden Pleasants either rightly or wrongly, and it matters not which, was involved in a newspaper controversy with Thomas Ritchie, jr., that he was seen on many occasions in the streets of Richmond, seeking his antagonist, and was heard repeatedly to say that he

would have his life or perish in the attempt—that he went upon the public square of the city, where the whole population of both sexes and all ages had then assembled, determined to cause a deadly affray in that crowded assembly, in the very midst of armed men, where a chance blow or a random shot would, in all probability, have produced consequences defying description. The eloquent expostulation of a friend, and the fear that public opinion would not sanction such an outrage, alone induced him to defer, but not to relinquish, his designs; and he retired from that public festival gnashing his teeth and clenching his hands with inexpressible rage, even at the sight of his adversary. On the following day he was seen in the principal street of Richmond, not even denying that his object was to bring on a conflict with deadly weapons in that public thoroughfare. At length, disgusted with the desire every where manifested to witness some horrid butchery, he determined for that cause, and that cause alone, to remove the scene of action from the streets of Richmond to the Common of Manchester. He then sent to the accused, through Mr. Archer, the message, which you have heard repeated so often in the testimony of witnesses and in the argument of the Commonwealth's Attorney. To this verbal message Mr. Ritchie returned a written reply, which has been read to you more than once. This letter was directed and delivered to Mr. Archer, and was by him shown to Mr. Pleasants during the same evening. Early the next morning, the accused was at the spot designated for him, accompanied by two gentlemen, whose duties had not been prescribed. Mr. Pleasants approached and passed within a few feet of Mr. Ritchie, who uttered no word and made no hostile gesture. A mutual friend, who accompanied the deceased, then submitted a proposition to Mr. Greenhow, who had no authority over the matter, to adjust the difficulty, not by compromise, but by an absolute withdrawal by the accused of the offensive epithet he had applied to Mr. Pleasants. This proposition not being acceded to, the deceased proceeded to arm himself in full view of the accused, with two duelling pistols, one six barrelled revolving pistol, a sword-cane, and a bowie knife. As he advanced, with a deadly weapon in each hand, Messrs. Archer and Greenhow, impelled by a humane desire to prevent the bloodshed they knew would be inevitable, agreed to take upon themselves the responsibility of stopping the fatal assault. Before a shot had been fired, they called upon the assailant, who heard them, but heeded them no further than to turn and shake his head in dissent. The conflict which followed you have heard in all its details from the lips of those who saw it. When they reached the scene of action, the deceased was powerless, and the accused standing by him; without making any attempt to injure his adversary, when his own life was no longer endangered.

Such, gentlemen, are the material facts in the elaborate testimony you have heard—the facts from which you are to judge of the guilt or the innocence of the accused. You have been told by the Attorney for the Commonwealth, that the message sent by Mr. Pleasants should be construed into a challenge, the letter written by Mr. Ritchie construed into an acceptance of that challenge, and the rencontre which ensued, a duel or single combat, subjecting the survivor, his aiders and abettors, to the pains and penalties of the Act of Assembly in that case made and provided. That this construction is not warranted by the law or the facts, will be apparent when we examine the one and refer to the other. The preamble of this statute, enacted on the 26th of January, 1810, entitled An Act to Suppress Duelling, is in these words:—

"Whereas, experience has evinced that the existing remedy for the suppression of the barbarous custom of duelling is inadequate to the purpose; and the progress and consequences of the evil have become so destructive as to require an effort on the part of the legislature to arrest a vice, the result of ignorance and barbarism, justified neither by the precepts of morality nor by the dictates of reason."—Then follows the statute which has been read to you by the Commonwealth's Attorney.

At the Common Law, deliberate duelling was punished in the same manner that it is now. Our statute, passed in affirmance of the Common Law, creates no new offence and prescribes no new punishment. The first section leaves duelling unaffected by the act, to be governed by those rules of law which have prevailed in Virginia from its first settlement; and in England from time immemorial. The following sections do not relate to the offence for which the accused stands charged, but were intended to prevent challenging and accepting challenges, by rendering the persons engaged incompent to hold any post of profit, trust, or emolument, civil or military, under the government of this Commonwealth. This is true on the confession of the Commonwealth's Attorney. However, it may be necessary to say something of the Act of Assembly, as a different opinion prevails in some minds.

Although the Common Law punished the survivor of a fatal duel with death, yet such was the tone and temper of the public mind of this State, that men of character and standing were at all times permitted to meet and adjust their personal differences by a resort to deadly weapons. Whatever might be the result of such a meeting, yet if it was fairly conducted, the offending parties were never held amenable to the law. This mode of settling difficulties between men who felt that their honor was involved, was not only sanctioned by public opinion, but all who aspired to the standing of gentlemen were required by the same tribunal to go upon the field and atone for wrongs committed or avenge injuries sustained. This

practice existed so long and prevailed so extensively, that it matured into a recognised *custom*. In this state of things the legislature of Virginia thought it necessary and proper to add the sanction of a positive enactment, to the unheeded requirements of the Common Law, in order to suppress an evil which had become destructive in its progress and consequences. To explain its meaning and define the offence it means to punish, the legislature prefixed to the enactment the preamble which I have read to you. It is perfectly evident from the words there used, that the only species of personal conflicts intended to be reached by the pains and penalties of the law, were those usually resorted to by men who acknowledged the authority of the code of honor. "The custom of duelling" prevailing to a great and destructive extent in Virginia, is, according to the letter of the law, the offence against reason and morality, for which a preventive was to be found by legislative wisdom. It was no novel crime—no new and unheard of combat—but a customary mode of violating the law—a recognised and established practice which was declared to be murder when death ensued within three months. It seems clear, then, that the unusual and unprecedented mode which Mr. Pleasants selected to vindicate his honor, and thereby forcing upon Mr. Ritchie the course he pursued, cannot be brought within the reach of a law which was intended, as its framers inform us, *to suppress a custom which had become so common that it was destructive in its progress and consequences.*

The statute under consideration no where defines the meaning of a duel or single combat. The law dictionaries contain nothing more definite. We are, consequently, compelled to resort to the common acceptation of those terms for the meaning of the legislature. This is more especially proper, as the offence those words imply, is designated as a practice of the country; and throughout the whole Act expressions are used which have no meaning except in the technical sense given them by that code of honor, as it is termed, which the custom of duelling called into existence.

In order to constitute a duel, according to the general understanding of this country and to the best English authorities, *there must be an agreement between parties to meet and fight a mutual combat on terms and conditions prescribed by the parties themselves, or by persons empowered to act for them.* If this be true, there must not only be an agreement to meet, but an unlawful compact to fight, in order to constitute the offence.

Not only has the prosecution failed in this point of the case, but a letter has been introduced which proves most conclusively that no such agreement was entered into. Mr. Pleasants, without calling upon Mr. Ritchie for satisfaction, and urged by nothing but a desire not to gratify the morbid curiosity of the citizens of Richmond, announces to him that he will be on the Manchester Common at sunrise on the 25th of February, armed with side arms, and with two friends similarly armed. In reply, Mr. Ritchie announces that he would go to the place designated: but that is not all he does. Having the strongest grounds for believing that this meeting was sought for hostile purposes, he remonstrates most earnestly against the absence of those terms and conditions which insure fairness and equality; and protests most solemnly against any combat without them, as savage, sanguinary and revolting, not only to the taste and judgment of all honorable men, but of the whole community. Surely this language cannot be tortured into an agreement, to which its author was a party, to fight mutually or otherwise! It is a renunciation as strong as human language could express of an intention of engaging in a rencontre unless driven to do so in self-defence; and his acts on the field bear out and sustain this interpretation of his words. A duel had been proffered Mr. Pleasants if he would send a proper challenge, so that terms and conditions could be arranged that would insure equal advantage to the parties engaged. No reply had been made to this offer. The gentleman to whom the letter was sent containing it, said expressly that his whole duty had been performed in delivering Mr. Pleasants' message. He, then, had no authority or control over the matter; consequently Mr. Ritchie could not have known until the assault was made that the duel would be refused, and the savage rencontre forced upon him: a species of contest against which he had solemnly protested.

There was no compact or agreement between the parties. Mr. Pleasants chose his mode of attack without consulting his adversary, and made that attack at his own time, with weapons of his own selecting. The accused had been informed that the deceased had been seeking him in the streets of Richmond—that he had been upon the public square with the intention of assaulting him; he was, therefore, impelled, not only by those principles of honor which become a man, to go to the Common of Manchester, but induced by a proper regard for the safety of other and innocent purposes to consent that the attack, which he knew to be inevitable, should be made at a more suitable place than the streets of Richmond. This is as far as his agreement can be made to go, for that is all he agreed to do, either directly or indirectly.

The English authorities agree that a duel is a species of mutual combat entered into by the deliberate agreement of the parties concerned, and they do not allow homicide committed in such a combat to be extenuated by those matters of excuse or justification which usually apply, because the parties have deliberately determined to do an unlawful thing. It is the compact to fight that constitutes the unlawful act, which tinges, with its criminality, all it occasions. The law-books do not differ on this

point. The agreement *to meet* does embrace the agreement *to fight*. And the reason of the rule that penal statutes must be construed strictly, would forbid that you should give to the words of the accused a more extended meaning than they really express, for the purpose of bringing him within the limited scope of the law.

If I have stated rightly the common acceptation of the term duel, and the meaning given to it by the writers on criminal law, it cannot be made to embrace any but a mutual combat. The law *may*, *perhaps*, be extended so far as to embrace the case of an attack by one party on the other, when that other had *expressly consented* that the combat should be thus commenced. But it does not embrace an assault to which this assent is not given. There is no mutuality in that case: and that case is precisely the one which you are now considering. Had Mr. Ritchie gone upon the field with a full determination to engage in a duel, yet it is perfectly clear that he never did assent to the particular species of combat in which he was forced to engage. He dissented to the time, the place, the weapons, the terms—to every thing of which it was composed. No human being but the assailant consented to a single particular. The accused informed him, through Mr. Archer, that he would be at the place designated at sunrise, and that while he was willing to fight a duel, he protested against the manner in which Mr. Pleasants had determined to adjust this unfortunate difficulty. Mr. Pleasants' reply, by his words and acts, was, that he would not fight a duel, that he claimed the privilege of attacking an antagonist in his own way, and that antagonist must defend himself as he best could. Had the parties met in the streets of Richmond face to face, and agreed to meet on Manchester Common for the *express purpose* of fighting a duel, and Mr. Pleasants had on the ground, or before they reached the ground, informed Mr. Ritchie that he intended to have two friends armed like himself, as spectators to see fair play, and that he intended to use "side-arms, excluding guns, rifles and muskets;" had Mr. Ritchie protested in the precise words of the letter which has been so often read to you, and that the deceased, disregarding that protest, had made the attack he did make, and received the wounds which were inflicted on his body on the morning of the 25th of February, no one, I imagine, would seriously contend that this would have been a duel according to the understanding of this or any other country. There is not a shade of doubt but that it would have been a felonious assault which the laws of God and man would have not only excused, but justified Mr. Ritchie in opposing, even unto death. Yet the case I have supposed differs from the case before you only because it is stronger against the accused; the part acted by deceased, to all intents and purposes being precisely the same in both.

In the supposed case, Mr. Ritchie is represented as going upon the field after havir tered into a compact to fight, while in r he never did enter into such a compact. withstanding this fact, you are told tha must not only construe his letter into an ; ment to fight a duel, but you are in effec that the rencontre which ensued was the cular species of duel to which he ha sented. You are required to place this and unnatural construction on his word he may be convicted of the highest known to our law, a crime whose distin ing characteristics are, according to a nent writer on Criminal Law, that t cumstances with which it is attended, a wicked, depraved, and incorrigible c tion—a heart regardless of social dut fatally bent on mischief. (a) You are req do this by one who apologises at eve for the acts of the deceased in conceivi arranging the horrible affray which clo mortal career—by one who, failing to the facts of this case the material for a tent explanation of his hero's conduct, would excuse the course he pursued, as to supply the missing links by imagining sudden freak or momentary whim. that all this is right. That you shor your imagination to the torture, in orde cover a chain of facts and feelings to e and in explaining to justify the conduct deceased. Admit that the contrary should be pursued toward the accused mit that his words should be denied the meaning, and his acts their manifest cance. Admit that he entered into an ment with Mr. Pleasants without any communication with him. Admit that tered into a compact to engage in a against which he solemnly protest agreed to terms against which he e remonstrated. When by this unhe course you have been convinced that by engaging in an unusual and unprec combat, may be rendered amenable t made for the purpose of suppressing on customs of Virginia; still I contend yo acquit the accused.

If the case you are considering amou point of law, to a duel, Mr. Archer mu been the second of the one party a Greenhow of the other. By virtue position, in the absence of any stipul the contrary, they were empowered to the difficulty, and control the acts of the cipals.

That this is the common usage, and understood to be by the Legislature, is explanation of the fact that they are he as guilty as their principals. Upon a hypothesis, a surgeon knowingly accom either party in a duel to the field, migh ced in the same category with the sec will be remembered by the jury, that shot was fired or a wound inflicted, M

(a) Foster.

Greenhow and Archer agreed to interpose their good offices and prevent bloodshed. They executed this agreement as far as circumstances would admit, and were prevented from accomplishing their object only by the fatal determination of the unfortunate deceased. Mr. Pleasants' own friend called upon him to stop. Mr. Greenhow, for himself and for his principal, called upon him to stop, and Dr. Warner and Mr. Deane joined in that call. Thus was the unlawful compact renounced by all parties, and Mr. Pleasants, in pursuing his object, acted upon his own responsibility, without the consent of any, and against the remonstrance of all who were present. The rencontre, from that moment lost the characteristics of a duel, if it ever had them, and degenerated into a felonious assault, restoring to the accused the inherent right of self-defence—the right to prevent, by inflicting death, the commission on his own person of an offence punished by death.

That a party to an agreement to fight a duel may renounce the unlawful compact, and be thereby restored to the general right of self-defence, I think will appear by an examination of the authorities. The reason that the plea of justification is not admissible in cases of deliberate duelling, where all that happens is consented to, in advance, by both parties, is that the party forseeing his danger, agreed to subject himself to, and abide by, the known hazards of the conflict. That conflict having commenced, the peril he invited shall not be an excuse for his taking the life of a fellow-creature, in order to avert it. Even in this case, Lord Hale seems to incline to the opinion, that at any time before a mortal wound given, one of the parties may decline further conflict, and if he does so in good faith, and his antagonist pursues him, he may avail himself of the necessity under which he was placed. (*b*) If he may do so, that portion of the combat which succeeds the renunciation of the compact, cannot be considered a duel. Mr. East, a later writer on criminal law, says, that when persons meet upon a compact to fight, that of itself presupposes a degree of confidence in each other that neither will take any unfair advantage: and then neither of them can have a right to pursue his adversary in the same manner as in cases of a felonious assault. And consequently, if one of them renounce the unlawful compact, and gives reasonable grounds for inducing a belief that he no longer seeks to hurt his opponent; and that other has no legal authority for mistrusting the truth of the offer, nor any right to pursue his advantage; so it may be urged that there is no reason why the law should, after such express renunciation of the unlawful compact, withhold from the first the general right of self-defence. (*c*) The jury will perceive that during a duel with small swords for instance, although it may be perfectly apparent that one party will kill the other unless that other takes his life, yet this necessity, to which he is supposed to have assented, shall not excuse him, yet if before he inflicted the mortal wound he had truly declined further conflict, and his opponent having no reason to mistrust his truth, still presses upon him, he may plead the necessity thus occasioned in defence of the homicide: and it is clear that if he may plead that necessity, the combat loses the character of a duel, after the express renunciation of the compact; and, consequently, in strict law, one portion of a mutual combat by agreement may be a duel, yet circumstances may arise during its continuance which will entirely change its nature. The case under consideration is infinitely stronger, for the rencontre was protested against in the city of Richmond before the parties went upon the field, and whatever compact had been entered into was renounced on the Common of Manchester, before the parties were engaged.

But it is useless to press this argument further. Although the accused stands indicted both under the statute and at the Common Law, the Attorney for the Commonwealth agrees with me in saying that the statute is in affirmance of the Common Law. The passage of the one simply affirms the existence of the other, with which it agrees in every particular. I have dwelt so long upon the statute only because I know that a different opinion prevails in some minds. There is no difference, however, between the prosecution and the defence on this point. You have to weigh the facts which have been detailed in the evidence, scrutinize all the circumstances of the case, and say whether the accused has done anything for which he deserves punishment. You can derive no assistance from the Anti-duelling Act. It asserts nothing but the existence of the Common Law, from which it does not differ, except in limiting its action to cases in which death happens within three months after the mortal wound is given and received.

It is clear law that a man may repel force by force in defence of his person, habitation or property against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony upon either. (*d*) He is not obliged to retreat, but may pursue his adversary until he has secured himself from all danger; and if he kill him in so doing, it is justifiable self-defence. (*e*) Had the deceased succeeded in taking the life of the accused, there is no question but that it would have been a felony—a felony accompanied with force, which it was lawful to resist by force. It is idle to contend that he drew the ball from one of his pistols, and did not intend to take the life of his adversary. The idea originated

(*b*) 1 Hale, 452.
(*c*) 1 East, P. C. 285.

(*d*) Foster, 273; 1 Hawk. ch. 28, s. 21, 24; 1 Hale, 445, 481; 1 East, P. C. 271.
(*e*) 1 Hale, 465; 1 East, P. C. 272.

in the brain of one whose nervous system was shattered and whose whole frame was in a state of concussion. It cannot be reconciled with the known and established facts of this case. The Commonwealth's Attorney has attempted the hopeless task, and with all his ability, failed most signally. He could frame no consistent account of the wishes and intentions of Mr. Pleasants which admitted this singular phantasy, without imagining the existence of freaks and whims of which he could give no explanation. You have heard the graphic description given by Mr. Wickham of the bearing of the deceased on the Capitol Square, gnashing his teeth and clenching his hands with inexpressible rage. On the evening of the 21st of February, he told Mr. Vial that he would have Mr. Ritchie's blood or he should have his. The same thing, in substance, was said to Dr. Warner on the following day. His conduct on the field confirms the belief derived from his previous acts and declarations. Why carry the array of weapons with which he advanced upon his antagonist unless he intended to kill? Why draw one of the balls, leaving the other, if he only intended to hold Mr. Ritchie's life in jeopardy? Why did he endeavor to run him through the body with his sword-cane, if he had spared him with the pistol? I confess my inability to answer these questions. I will not repeat what was so ably said by one of my associates on yesterday, as to the caution with which dying declarations should be received in evidence, made, as they are, when the party to be affected by them is not present to cross-question, or to see at what point the dying man's memory fails. I content myself with referring to a case cited from first Moody's reports by the Attorney for the Commonwealth. In that case it was held that declarations made eight days before the death of the party were received in evidence, when he believed he would not recover, although his physician had expressed to him some hope that he would not die. On the authority of this case produced by the prosecution, everything Mr. Pleasants said affecting this case, from the time he received his mortal wounds to the hour of his death, is equally admissible as dying declarations. Dr. Warner testifies that he said he would not recover whilst on the field, and said that his pistols were badly loaded. At the toll-house of Mayo's bridge, he said, with an oath, as Mr. Irby testifies, that his pistols were not half loaded. After he reached home, he said the same thing on two different occasions in the presence of Dr. Palmer, and, as Mr. Triplett informs you, adding on one occasion, that *had he loaded his pistols himself, all would have been well.* And when he was informed that it was a providential thing that he was not killed on the field, he replied that "it is a more providential thing that Ritchie was not killed;" thereby intimating that his antagonist's life was in imminent peril. It is not pretended that the first pistol discharged by Mr. Pleasants was the one from which he extracted the ball. Yet it is perfectly manifest that the ball lodged in the cooper's shop could not have been discharged from that pistol, and must have been driven from the one which, as is now contended, was harmless. Dr. Warner has informed you that when Mr. Pleasants discharged his first shot he was on the southern portion of the embankment, between the two canals, while Mr. Ritchie was on the northern. The shot, then, must have gone toward the city of Richmond, and could not possibly have re-crossed the embankment and the southern canal, which passed more than twenty feet behind Mr. Pleasants. But Mr. Sutherland's testimony places this matter beyond all doubt. Although he is a gunsmith, yet he acknowledges his inability to extract the ball from a duelling pistol with any of the implements which usually accompany such weapons.

But gentlemen, the Attorney for the Commonwealth, after dwelling at much length on this feature of the case, has informed you that it does not affect the cause of the accused. If Mr. Pleasants did extract the ball from one of his pistols, that fact could not influence the issue you have to try. Mr. Ritchie could not have known it, and cannot therefore be prejudiced by it. This is too plain to need a formal reference to authorities. They justify a man in taking the life of a fellow being, when he acts with due caution and circumspection, and has reasonable grounds for believing that the person slain had a felonious design against him, when that design is accompanied with any overt act which indicates its existence. (*a*) Without the weapon which is now alleged was to have been harmless, the deceased was fully and formidably armed. The first weapon he used, it is admitted, was sufficiently charged; and as soon as the second had been discharged, the sword-cane was resorted to, with a manifest determination to take the life of his adversary. Mr. Pleasants himself believed, after the contest was over, that he had used this last weapon with such effect, that Mr. Ritchie had received two wounds. Here, then, was not only a manifest intention, but a fierce attempt to commit a felony,—an attempt which had been carried so far that it was believed to have been successful. If there was evidence in this case to show beyond the possibility of a doubt, that every weapon which was carried on the field by the deceased were harmless—mere imitations of what they seemed to be—and that no bodily harm was intended to be inflicted, still the case would not be altered. A case is mentioned by Lord Hale to illustrate the law I have just stated. (*b*) In that case, the party had been aroused from sleep by a cry of thieves, and advancing in the dark, thrusting his sword before him, killed a woman who had been hired as a temporary assistant by one of the servants, taking her to be a thief. This was ruled to be

(*a*) 1 East, P. C. 272, 3.
(*b*) Hale, 42. 474.

misadventure. Hawkins says of the same case, it seems the defendant may *justify* the fact under these circumstances, inasmuch as it had not the appearance even of a *fault*.(c) Mr. East thinks it is, perhaps, more properly *excusable*.(d) Other cases, sustaining the same principle, might be cited, but it is unnecessary to waste the time of the Court and Jury in discussing a subject which is plainly and confessedly irrelevant. I can see no reason for its introduction, unless it was intended to awaken sympathy for the unfortunate man whom cruelty cannot pain, and kindness cannot soothe. It is doubtless pleasing to those friends who were proud of his genius while living, and who cherish his memory when dead, to think, and to make the world think, that he harbored no hostile purpose. Nor am I surprised that they believe, even without reason, what they wish to believe, and endeavor to excite sympathy and compassion, whose natural and unavoidable consequence is injurious and prejudicial to the accused. Unjust as this is, yet it is not uncommon to sacrifice the living to the dead:—the garb of kindly feelings conceals the enormity of the offence, and the victim of this indirect persecution is not allowed to utter a word in his own behalf. If he dares but raise his voice to prevent this poisoning of the public mind, or counteract its effects, it is heard as conclusive evidence of a wicked, depraved and malignant spirit. Customary as such conduct is, yet a court of justice is not, in my judgment, its proper theatre. The law and the facts pertinent to the issue, are everything that should be regarded here. By the law and the facts, the accused is willing to abide, without appealing to prejudice, or asking for sympathy. Believing that he has offended in nought, the truth is all he desires to elicit—then he is willing to abide by the laws of his country.

I have already stated to you the law of justifiable homicide in self-defence. But you may be told that the party killing must be wholly without fault in bringing the necessity upon himself which he pleads in justification: and that the accused, having gone voluntarily to the common of Manchester, is not wholly blameless. This ground, untenable as it is, seems to be all that is left to the prosecution. To deprive a party of the justification arising from necessity, he must be guilty of some illegal act, by which that necessity is brought upon him. This is all that the law-writers mean when they say he must be wholly without fault. They refer, without exception, to the case of Drayton Basset, as authority for the principle.(e) In that case, a party of men came to Basset's house and forcibly ejected him and his family. Basset and others returned with weapons with an intent of murder, and one of them cast fire into a thatched house adjoining the mansion; whereupon one of the parties wrongfully and illegally in possession, fired a gun and killed one of Basset's party. This was ruled manslaughter, *because the entry and force was illegal;* but not murder, because there was a sudden provocation. This is all that Basset's case decides. And, that case is at once the authority for, and the explanation of, the rule, that the party shall be wholly without fault in bringing the necessity on himself. As thus explained, it simply means that a person who has committed a homicide, shall not be justified by the necessity under which he was placed, *if that necessity was produced by his own illegal act.* When there is an attempt to evade the law, and to do indirectly that which would be criminal, if done directly, it is the same offence as if the law had been violated, and the illegal act committed. It is in this sense that the case is to be understood which was read to you, in which it was ruled murder in him who being challenged refused to fight, but *in order to evade the law, and to make his refusal a disguise for that purpose*, contrived to meet with his adversary by informing him of his intended movements, and being attacked, killed him. The fact being conceded that the action of the party was intended to evade the law, while he desired to do a criminal act, it is properly held that the attempt at evasion shall be of no avail, and that the case shall stand on the same footing of illegality, as if no such effort had been made. As thus explained, it agrees perfectly with the decision in Basset's case.

Another principle of law remains to be considered, which places this matter beyond all doubt. In justifiable homicide, in defending one's person or property from a violent felony, no blame attaches to the party. But in a mutual combat, on a sudden provocation, when one party, before a mortal wound is given, retreats as far as he can with safety, and then kills his adversary in order to preserve his own life, the homicide is defended on a different principle. This is self-defence culpable, but through the benignity of the law, excusable. (f) This distinction is made for the reason that the necessity is, in some measure, founded upon the fault of the party urging it in excuse. In such cases, it matters not who gave the first blow, if either party quit the combat and retreat as far as he conveniently can, before a mortal wound is given. This forms no ingredient in the merits of the question. Both parties are supposed to be wrong; but acting in the heat of sudden passion, they are not held guilty of such an illegal act as to be deprived of the right of self-defence when subject to imminent peril which they have endeavored to avoid, by retreating as far as safety would permit. This distinction between justifiable and excusable homicide, shows that the law does not require a party to have acted without any manner of fault or imprudence, in order to justify him-

(c) 1 Hawk ch. 285, 27.
(d) 1 East, P. C. 275.
(e) 1 Hale, 440. 1 East P. C. 259, 278, 9. 1 Hawk, ch. 315, 37.

(f) Foster, 273.

self on the plea of necessity. Even when an illegal act is done hastily and without premeditation, the same plea still excuses, if the culpable party really avoids, as far as possible, the continuance of the sudden affray which he has caused. A homicide on necessity in self-defence is *justified*, if the person seeking to be excused has not been guilty of an illegal act in bringing about that necessity; and it is excused even if an illegal act is committed in the heat of passion, and without deliberation, when there is a real endeavor to fly from the danger that has been provoked.

The fact that Mr. Ritchie went upon the common of Manchester, does not deprive him of the full benefit of the plea of justification. He committed no offence by going to, and showed no disposition to commit one, when he had arrived at the place designated. It is not pretended that he adopted this course to evade the penalties of the law. He had heard that the deceased was seeking him in the streets of Richmond, and he would have been branded as a coward, had he skulked from his antagonist. The finger of scorn would have been pointed at him by the very persons who are now loudest in their condemnation: they would have hunted him from society as a disgrace to his name—as a dishonored and degraded man. The fact that he had proffered a duel would have been used to destroy him, and we would have heard from every source that his antagonist could not conscientiously engage in such a mode of combat; and that it had been offered only as a decent mode of avoiding a responsibility which he was afraid to meet.

But what is the offence which is to deprive the accused of that protection which is secured to us all by the laws of the land? What offence has he committed which should destroy every plea of justification? It is simply, gentlemen, that he went upon the common of Manchester on the morning of the 25th of February, under the circumstances which you have heard detailed in the evidence. Knowing that an attack would be made upon him—that the attack would in all probability be made in the streets of Richmond, where every innocent passenger would be placed in imminent peril, he preferred that the assault, which he neither sought nor avoided, should be made, if it must be made at all, in some remote place, where the parties alone could suffer. This proper regard for the lives of others is not to be construed into a purely criminal act, which is to deprive the accused of the rights which nature gives him—the right to protect his own life at every hazard. He sought no opportunity to meet Mr. Pleasants, nor did he avoid one. Unlike the case which has been mentioned to you, he did not inform his adversary where he might be found, in order to provoke an attack, but simply did what he had a right to do, by refusing to act the part of a craven; by refusing to incur the stinging reproach which has been urged in justification of the desperate course pursued by his assailant. If our penal laws were intended to take cognizance of such acts—if the safety and well-being of society demands that the harshest pains and penalties of the law should be visited upon one who has conducted himself in a trying situation as the accused has done, then some punishment may be merited. This punishment it is your duty to inflict. But if he has committed no offence against the laws of the land—if he has but acted as all of us would wish to act—if he has done nothing which manifests a spirit and disposition dangerous or troublesome to the community in which he lives, but has only defended his life when that life was in imminent peril, it is your duty to restore him to his friends and his family—fully and completely acquitted of the offence with which he stands charged. That you will do this, I cannot for one moment doubt. The validity of his defence, on the law and the facts, no candid and impartial mind can question. In every point of view, the simple statement of the evidence supercedes the necessity of any advocate, however able, and makes out a case too strong to be prejudiced by the inefficiency of any one who may endeavor to defend it. This latter consideration has emboldened me to speak at greater length than I intended; and I now leave the cause of the accused with you, gentlemen of the jury, and with the abler and more experienced counsel who will follow me: nothing doubting that a verdict of acquittal will be promptly rendered.

ANDREW STEVENSON, Esquire, then rose and addressed the Jury—

May it please your Honor.—It becomes my duty, Gentlemen of the Jury, to submit to your consideration, my views of the grounds upon which I intend to rest the defence of this important and interesting cause; for deeply so, must every cause be which is, necessarily, a cause of blood! I feel indebted to the indulgence of the Court for the opportunity afforded me of addressing you this morning whilst we are all comparatively fresh, and better prepared for discharging our duty, than we could have been last night, at the close of an unusually long and protracted session; fatigued and worn down, as we necessarily all were, and none more so than myself. I shall therefore endeavor to show my appreciation of the personal indulgence so kindly extended to me, by occupying as small a portion of your time, as my duty, and the nature of the defence, will permit.

I listened yesterday with great attention and pleasure, to the ingenious and impressive speech of the gentleman who conducts the prosecution, on the part of the country, and whilst there was much in his address, which I could not approve, and much more which we certainly could have no interest to deny; there was one opinion which he expressed, and enforced, in opening the prosecution, in which I feel assured, that my honorable associates and myself, most heartily concur, and that was,—the vital importance of the cause which you are called on this day to decide—an importance, gentlemen, which in every aspect and relation in which it can be viewed, cannot be too highly, or deeply appreciated.

It is important to the accused, in every interest, which can be dear to him on this side the grave,—important not only to life, but to character and reputation, in the vindication of which, he periled that life, and was forced to shed the blood of a fellow man, and for doing which, his own blood is now demanded in the name of his country, as an atonement to its offended laws, and an expiation of his supposed offence.

It is important to you, gentlemen, as his jurors and judges, upon whom the responsibility rests of pronouncing a decision; and in proportion as you value your own peace and happiness, and the judgment which will be pronounced on the verdict, which you are this day to render.

It is important to our country, as she values her high judicial character, and its purity and independence, on which so essentially depend the security of life, liberty, and reputation. It is to the independence and fairness of our judicial tribunals, and that glorious privilege of trial by jury, that in the *best times* and the freest governments, we are to look for the security of our dearest rights. In the *worst*, they are the only safeguards against injustice and oppression.

Well, then, may the counsel of the accused, unite with the commonwealth's attorney in saying to you, that this is no ordinary trial!—On the contrary, may it not justly be regarded as one of novel and appalling character? It is the first effort that has ever been made in our country, at least in this old and renowned commonwealth, to stamp upon an honorable and high-minded man, and one in the flower of youthfulness, the brand of blood-guiltiness and murder, for having vindicated his own life and honor, in a fair personal combat, unsought, and uninvited by himself, and entailing dishonor and shame upon a numerous and amiable family.

There may be some in the busy vortex that plays around this scene of action, that may regard it simply as the trial of an individual, and gaze upon my unfortunate young friend at your bar, as the only one interested in its issue.—But what a mistaken; fatally mistaken view of the case. Gentlemen, let me tell you, and I do it under solemn sanctions of duty, as counsel and as a man, that this is not alone the cause of *Thomas Ritchie, Jun.* It is your cause, and mine, and that of every free man in this land. There is involved in its issue, the highest and most sacred right that belongs to man—*the right of self-preservation.* That right, which has been justly said to be founded in the nature and constitution of man which is inherent and inseparable from his nature, without which the boon of life itself, would be a curse, rather than a blessing, and which neither the laws of God nor man, can or ought to impair. Such is the cause, gentlemen, which I am now called on to defend.

To say that I can do it without emotion, and embarrassment, would be neither candid, or true. Indeed, on my part it would be an unworthy affectation. I stand here, gentlemen, in a situation, very different from that occupied by my distinguished associates and friends.—We stand very much contrasted with each other, on this occasion. They are in the arena, armed and ready at all times for combat.—I can boast no such advantage. I come to the field after years of retirement, which have been devoted to pursuits wholly different from those of the law, and feeling deeply the painful responsibility which I am about to incur. An absence of eighteen years and more from the judicial forum and all its kindred pursuits, admonish me, that my place here to-day might be much better supplied, and it would have been, I assure you, but for the peculiar relations in which I stand to the accused, and his cause.

Gentlemen of the Jury, I have known the accused from his earliest infancy. I was the intimate and bosom friend of that gallant and patriotic uncle,* who poured out his blood like water, upon the plains of Canada in defending the rights and honor of his country, and I have

* The late Captain JOHN RITCHIE was killed in Lundy's Lane at the head of his company, after being repeatedly ordered to retire, but refused to do.

been from early manhood, the intimate personal and political friend of that father, so well known to you all, and to whom I am bound by the strongest ties of affection and friendship. When called on by such a father, in consequence of his absence, to take his place and stand by his child in this greatest of human trials, I felt that I had but one course to pursue, and that was, to yield my assent at any personal sacrifice, and unite with my honorable friends in this defence. I am here to discharge this duty, and from it, I do not mean to shrink. I shall endeavor to perform it, in as plain and intelligible a manner as I am able, yet with the frankness and fearlessness that I think it demands; and I shall more than rejoice, if in this last act of a long professional life, I shall have it in my power to contribute in any manner, to the successful and honorable acquittal of my unfortunate young friend. On no other terms would he, or his friends, I am sure, be willing to receive it.

But, gentlemen, all the exertions of myself and my friends, will avail nothing, unless you are prepared to do your duty. And here let me remark, that I cannot well imagine in the entire range of man's duty, one more painful, more important, than that which you are called on to discharge, either as it regards the administration of public justice, on the one hand, or the fate of the accused, on the other. There is no function or trust requiring to be discharged, under a sense of more solemn obligation, than those which affect the life or liberty of a fellow man. And I concur with the commonwealth's attorney in the opinion he expressed, that the decision should not be made under the influence of momentary feeling, but upon a just and impartial examination of the merits of the case. But truth requires me to say, that at one time at least, there was just cause to apprehend that this might not have been the case. In our country, gentlemen, as well as elsewhere, I need not admonish you, that the pure administration of public justice, does not always depend upon judicial tribunals. Its streams, and not unfrequently its source, may be poisoned by mistaken notions and malpractices elsewhere. And that one of the most formidable engines to accomplish this, is to be found in the public press. In this instance there is too much reason to fear it has been the case. I need not recall to your minds, and the minds of all present, the unprecedented excitement that seized the public mind, at the moment that the fatal catastrophe took place, out of which these proceedings have sprung. I will not allow myself to speak of the effects that were produced through the agency of the press, (of which to its honor, that of Richmond, and the State generally, were exempt,) so well calculated to prejudge and prejudice the accused and his cause. I need scarcely tell you of what you must all have heard, that from one end of this vast continent to the other, the press was filled with the most cruel and unwarrantable statements, connected with this whole affair, and accompanied in numerous instances by the wildest, and most cruel denunciations of the accused and his friends.—And if there be any one present, disposed to doubt as to the character, extent, or injustice of these publications, let him but cast his eyes on the numerous extracts now before me, and their doubts will soon vanish. [Here Mr. Stevenson held up numerous extracts taken from the exchange papers of the "*Enquirer*," professing to give statements of the rencontre between the deceased and accused, and many of them purporting to be written from Virginia.]

Now in the whole of these publications, gentlemen, as may be seen by comparing them with the evidence and facts in this cause, there is scarcely one word of truth, except as to the fact of the death of the deceased, and that he fell by the hand of the accused. And I will further say, that no just or liberal man can read these statements without feeling his blood almost freeze, and without the deepest pain and mortification! I know, gentlemen, that it may be said, as it has been said, that all this is quite natural and to be expected. That men will suffer themselves to be hurried away by the impulses of the moment, in cases of this description, and catching the contagion of other men's passions and feelings, and under a morbid excitement, surrender their judgment to their emotions, and join in the general denunciation of all such mortal combats. This may be all so. It may be natural, but it is not the less unjust and unfair; nor the less fatal in its consequences.

The accused rejoices to know that he has the right this day of standing at your bar, and defending his conduct, before the world, and a jury of his country, uninfluenced by public clamor and feeling. He rejoices, and so do his counsel, in the persuasion, that no matter how prejudice or misrepresentation, may have been enlisted against him elsewhere, here, at least, they dare not enter; that within these walls, we are to look for nothing which shall be calculated to disturb the pure administration of public justice on the one hand, or cast a momentary shade across the minds of those who have been selected to pass between the country and himself on this solemn occasion. Examine then, gentlemen, your own hearts. See that all, as it should be, is calm and right. And should there remain the slightest shade upon your minds, (and some of you have said that you have heard much of this unfortunate affair,) discard it, I beseech you. Offer it up upon the altar of public justice, as you value truth and fair dealing, and your own peace and happiness. It is a sacrifice that you owe to yourselves, the accused, your country, and your God.

And here, gentlemen, before I proceed to the argument of the case, let me say, that I feel myself called upon to guard against being supposed to intend anything unkind or disrespectful to the character or memory of the deceased, in the reference which I shall be compelled to make to his conduct, and the pro-

ceedings in this cause. I owe it to myself, to the memory of the deceased, and to the accused, to place myself in the position in which I mean to stand. I certainly can have no intention in any thing which I shall say or do, as counsel in this cause, to detract from the character, or misrepresent the conduct or motives of the unfortunate and lamented individual. I can have no motive or justification, under heaven, to do so. Whatever the political relations may have been between us, and much as my public conduct had been assailed, in the journal which he so long edited, I had no feelings of personal unkindness or hostility towards him, as I believe he had none towards me. Few men, probably, who never held higher public stations than myself, were ever more violently assailed, or their public conduct and opinions more freely canvassed: and whilst I owe it to truth to say, that I often felt and believed, that these attacks were wanton and unjust, and for the moment suffered under them, (as all *thin skinned public men* will do,) and denounced them; yet these feelings were ever short-lived and evanescent. I ought to have known and felt the force of what, during our more peaceful relations, he sometimes said to me, that he would never have indulged to the extent he did, if he had not regarded my position and opinions as of some consequence, and, therefore, fair subjects for political attack. In being thus assailed by the press, I had probably no just right to complain, nor has any man who is in high public station. It is the penalty which they, in a country like ours, must expect to pay for power and station. That the press may be, and often is too licentious, is admitted, but we cannot separate its licentiousness and its freedom. It is the mighty power that brings public men and rulers to the bar of public opinion—to that *tribunal*, to whose judgment no man is, or can be indifferent, and whose decisions none can successfully withstand. The glory of our free institutions; the experience of all other governments; the records of all history; admonish us that liberty and free government are only secure, whilst guarded by a free and enlightened press, and the vigilance and virtue of the people. The evils of such a press are temporary, its benefits immortal. I was therefore never the enemy of *John Hampden Pleasants*. I met and parted with him only a few days before this fatal tragedy in a kind and friendly spirit, and the last words he ever uttered to me were those of respect and commendation, in connexion with our country and its present condition;—and which were characteristic of him. God forbid, then, that I should feel, much less utter, any thing like purposed disrespect towards him or his memory. Few men, probably, out of his own immediate circle of friends, deplore more his unfortunate and untimely end, and the consequences that have resulted from it, than I do; none more unwilling to cast any slur upon his reputation, or give a wound to the feelings of those who mourn his loss. I know that if he had his faults, and who of us have not, he had his virtues, and many noble and generous impulses; and I would therefore not only tread lightly on his ashes, but shall ever be ready to drop the tear of sympathy upon them as I pass by. I shall say nothing therefore as to his conduct, but what may be necessary in the defence of the accused, and I feel assured, gentlemen of the Jury, that if his spirit was permitted to look down upon this trial, it would repeat to you what he said a few minutes before he died, to his young relative, "*That he was himself to blame for all that happened on the field; and that the conduct of the accused and all present was highly honorable, and that no blame could or ought to attach to them.*" He knew what the accused would suffer in having been forced to shed his blood, and he wished to afford him the only solace and consolation in his power.

What a noble illustration of a manly and magnanimous spirit. He is now no more, and as far as I am concerned, his ashes shall rest in peace. I implore then of those who hear me, that if anything should escape me in the heat of argument, which may be thought to bear any color of disrespect to his memory, that they will believe it, as it will be, unintentional.

With these preliminary remarks, gentlemen, which I have felt it my duty to make, I shall now advance to the law and facts of this case.—And first, as to the charge:

The accused stands indicted, under the *first section* of the Statute of Virginia to suppress duelling. That is in the following words:—

"That any person, who shall hereafter wil-
"fully, and maliciously, or by *previous agree-*
"*ment*, fight a duel, or single combat, with any
"engine, instrument, or weapon, the probable
"consequence of which might be the death of
"either party, and in so doing, shall kill his
"antagonist, shall be deemed guilty *of murder*,
"and suffer death, by being hanged by the
"neck, &c."

This act passed in the year 1810, and was re-enacted, after the new Constitution went into operation, in the year 1831. Now, gentlemen, the attorney for the commonwealth admitted, in opening this case last night, that the prosecution rests exclusively, upon the first section of the act, I have just read to you, and that if you shall believe that the deceased lost his life by *fighting a duel, or single combat*, by *previous agreement*, with the accused, that then he is guilty of *murder*, and you are bound to convict him, but that, if you shall believe it was *not a duel*, within in the words or meaning of the law, that then, he is entitled to an acquittal! We have here, gentlemen, the ground on which this prosecution rests. Now, I mean to maintain the following propositions:

1st. That it was not a duel, within the *letter* or *spirit* of the act. 2nd. That if it was a duel, then the party killing, to be convicted, must be guilty of *murder in the first degree*, and consequently it must be proved to have been a *wilful, deliberate and premeditated killing*; and 3dly, that if I am mistaken in this, and it was

yet such a duel, as was contemplated by the law, whether with or without malice, yet this section of the act cannot, and ought not, to be enforced in this country, except in cases of an unfair or foul duel, and when the real object of the party killing was to justify a bloody malignity, and not for the purpose of vindicating his reputation or honor in an equal and fair combat. If I succeed in making good either of these alternatives, your verdict must be one of acquittal.

Before considering the general objects of the anti-duelling statute, let us examine and see whether this was, or was not a duel, within its provisions.

At the threshold then, gentlemen, I utterly deny, that there were any of the leading or essential requisites, to constitute it a duel, either in the ordinary and common acceptation, according to the *code of honor*; or of that description of duel, which the legislature intended to suppress and punish by the first section of its law.

In the first place I deny that there was any challenge, written or verbal, given, or accepted, to meet and fight a duel. It has been argued by the commonwealth's attorney, and I admit justly, that there is no particular form of words, either written, or oral, necessary to constitute a challenge; but yet, as he admits that a *previous agreement or compact* to fight a duel is necessary, under the words of the law, a challenge must be proved, and the first part of his argument was directed to that object. It is therefore the first link in the chain of evidence, and becomes important and vital to the prosecutor? You will also bear in mind, that in all cases where a challenge is given to fight a duel, whether the duel be fought or not, and where no death ensues, the parties are still liable to a criminal prosecution, for sending or accepting the challenge to fight a duel, and in such cases, proof to sustain the prosecution, must be clear, as to the fact of giving or accepting the *challenge!* Hence it follows, that the same degree of evidence is required, where an actual fight takes place, and death ensues, and the party is indicted for the killing. Such is the present case. Now the law lays down very clearly the rules by which courts and juries are to ascertain the character of the written paper, or the *words spoken* which are relied on, as constituting the *challenge!* The leading principle is this—that where the writing or message, alleged by the prosecution to amount to a challenge, shall be uncertain or doubtful in its character, or *at all ambiguous*, as to what was really meant, then the words are to be explained by the *intention and understanding of the parties at the time they were so written or spoken.* This doctrine is laid down by the writers on criminal law, and I shall content myself with referring to a single and leading authority on this point. It will be found in *Roscoe's treatise* on criminal law. On the subject of challenges to fight duels, this writer says:—"The prosecutor must prove, 1st. The *letter* or *words* conveying the alledged challenge. 2nd. Where a *challenge* does not *clearly appear*, he must then prove the *intention of the party to challenge!* In general, the intent of the parties will appear from the writing or words themselves, but where this is not the case, or where the *writing* or *words are at all ambiguous or uncertain*, the prosecutor must then show the circumstances under which the words were written or uttered, for the purpose of proving the challenge." In support of this doctrine, adjudicated cases, both in England and this country, are referred to by the writer.

Now, gentlemen, let us apply this doctrine of the law, to the message which it is alleged, constitutes the challenge or agreement in this case, and which the prosecution is obliged first to establish. This verbal message from Mr. Pleasants to Mr. Ritchie, delivered by the friend of the former, is contained in the note of the accused to Mr. Archer, which the commonwealth's attorney has introduced, and made evidence in this cause. It is in the following words:—"*I am requested by Mr. Pleasants to inform you, that he will be on the Chesterfield side of James' River, to-morrow morning, at sunrise, armed with side arms, without rifle, shot gun, or musket, and accompanied by two friends, similarly armed.*" Here, you will remark, gentlemen, that this message contains no demand whatever, for satisfaction of any kind—no intention to meet—no reference to any previous or subsequent arrangement—no challenge to fight a duel. It was simply the annunciation of the fact, that the deceased would be at a certain place, at a particular time, with side arms, and two friends. Now, all this might well be, and yet there exist no intention to challenge, or fight a duel, as I shall hereafter, I think, conclusively show to you. The first enquiry then, is this—was it *an agreement*, or *compact* on the part of the deceased to fight a duel? For if it was intended as a challenge for a *combat or fight*, other than a duel, it is admitted, that it will not maintain this prosecution. Did the deceased intend, or regard it as a duel? I deny it, and that on the most conclusive reasoning and proof. And first, Is it not in evidence, gentlemen, that Mr. Pleasants himself, did not intend this message as a challenge for a duel? Is it not shown by the witnesses of the commonwealth, that so far from it, he declared to his friends, that he *could not fight a duel?* That he stood *solemnly pledged, under no circumstances* whatever, to fight a duel, or give a *challenge to fight one*, and that nothing should induce him to violate that pledge? And you will also bear in mind that these declarations were made to his bosom and confidential friends. [Here Mr. Stevenson referred particularly to the evidence of *Mr. Archer* and the declarations to *Dr. Warner*, that he, Pleasants, meant to advance and assault Ritchie, and wait for his fire.]

So far then from regarding this message as a *challenge*, the deceased declared most ex-

plicitly, not once, but repeatedly, that it was not, nor was it so intended by him. Why, then, gentlemen, let me ask, was there all this caution on his part, if he really meant, or intended to challenge the accused to fight a duel? Why did he not frankly say so? Why depart from the usual, nay, universal custom, in all such cases? Why equivocate? Why play false, to himself or others, if he really intended a duel? Why indulge in covert, or *convenient seeming?*

Gentlemen of the Jury, *John Hampden Pleasants*, was not the man to adopt any such course. He was not a man to shun danger or difficulty, much less the supposed penalties of the law, in matters of this kind, when his mind was once decisively made up for action.

He was a man of strong and ardent, nay, impulsive passions, rash and indiscreet, if you please, but he was not the man to palter, or attempt any indirection, to screen himself from the hazard of censure, or even punishment, when he had determined on his course of action. And this was true, not only in all his personal, but political relations. The whole history of his editorial life, is full of instruction on this point. Besides, he had strong objections, as has been proved to you, to duelling. They were doubtless founded on other and higher motives, than those of a desire to shun legal responsibility, or its consequences.

Why then, attempt to impute to him, motives which he had not, and to make his acts bear a construction, which he himself, never intended they should bear. The rule on this subject, laid down by a distinguished British judge, is the true one. *Lord Chief Justice Eyre, says—*

"*In the affairs of common life, no man is*
"*justified in imputing to another, a meaning*
"*contrary to that which he himself intends, but*
"*on full and conclusive proof.*"

The whole history, then, of this bloody tragedy, place beyond doubt the true intention of Mr. Pleasants, namely:—to make *an assault*, but not fight *a duel.*

We are bound, therefore, to believe, that he did not consider his message as a challenge to fight a duel, at the time it was sent, nor did he ever admit it afterwards, to be one. It is due to the veracity, and memory of the deceased, to believe that he did not so intend it,—and such must be your opinion, gentlemen, upon a review of the circumstances attending the objects and delivery of the message. On his part, then, I have a right to say, that there was *no previous agreement, or compact, to fight a duel, such as the law requires, and which must be proved.*

Nor is it less clear, that it was not regarded by the accused, as a challenge to fight a duel, and of course not accepted as such! On the contrary he expressly declined to accept it, because it was *not a challenge*, and protested against the whole proceeding. Look to the language which he used, and which not only places his conduct and character, in relation to this unfortunate affair, on high and elevated grounds, but challenges the respect and good opinion of every high-minded and liberal man. What was that language?

"*This disguised challenge I protest against.*

"*1st. Because it is not in the form which is justified by men of honor, and to a great extent upheld by public opinion.*

"*2d. Because it prevents that certainty of equal advantage, recognised by all gentlemen as an essential of the duel, or fair and chivalrous combat.*

"*3rd. Because it gives to the challenging party the privilege of selecting time, place, and weapons, a right which according to all usage belongs to the challenged.*

"*4th. Because both the time and place are so selected, as to occasion great inconvenience and danger to all parties concerned, from a legal prosecution.*

"*5th. Because the terms proposed are savage, sanguinary, and revolting to the taste and judgment, not only of all honorable men, but of every man in the community, and calculated to cast odium on any one who may be governed by them. I am ready to receive a proper challenge from Mr. Pleasants, but for the reasons above given, I solemnly protest against the terms proposed. On his head then must rest all the blame and reproach which shall be incurred from acting in defiance of these considerations. Notwithstanding, I shall be on the ground at sunrise.*"

Now let it be borne in mind, that when this message was delivered to the accused, he inquired what Mr. Pleasants meant by it. He desired to know of the bearer, whether it was intended, or to be regarded as a challenge to fight a duel or not. The answer of the gentleman who bore the message of the deceased, was, "that he had nothing further to say on the subject. That he was not authorised to do more than deliver the message, and he believed it would be hopeless to expect any other reply from Mr. Pleasants."

The accused then in consenting to be at the place, did not consider himself as pledged, nor did he go to fight a duel. Nor is the fact stated in his note, of *his readiness to accept a challenge*, to be made to operate against him in this trial. The Attorney for the Commonwealth, argued before you, gentlemen, that this was strong persuasive evidence against the accused, at least a strong circumstance to show his readiness and willingness to engage in duelling. Now I deny that there is anything in this which can, or ought to operate in any manner in aid of this prosecution. Why the fact was mentioned I cannot imagine, but to create a prejudice against the accused. By reference to the authority I have just cited from *Roscoe*, it is expressly declared, that *evidence of a readiness to accept a challenge to fight a duel*, shall not be construed as amounting to a challenge. Nor was the rencontre or combat which did take place, a *duel*, in the common or legal sense of the word. It was no duel, in any shape or form, as I will now proceed very briefly to

show. In the first place, gentlemen, it was contrary to all the usages of fighting duels, as recognised by the code of honor, or any of the modes practised by gentlemen.

1st. There were no terms proposed or accepted for fighting, either as to principals or seconds.

2nd. There were no weapons designated or agreed upon, but each party was to have the right of selecting as he pleased; arming himself, or not, with the exception of rifles, shot guns, and muskets. And here let me ask, who ever heard of a duel, where one of the combatants might have the liberty of fighting with a sword, and the other with fire arms, or with both united?

3rd. There were no conditions or stipulations as to distance; an important ingredient in all such matters, and especially if fire arms were to be used.

4th. There were no conditions as to firing, or commencing the conflict, if one ensued.

5th. No provision as to who should give the word, in case fire arms should be used.

6th. No agreement as to interference by the friends of either party, or their seconds, or what they were to do if called on, or required to act.

7th. No terms whatever of equality, so indispensable in all personal combats, and especially in duelling.

All was uncertain. Nothing definite. Nothing arranged or agreed upon. The deceased settled the whole—selected the place—time—arms—the mode of attack, (if there was to be one, which was uncertain) the distance, and every material thing necessary to a rencontre. The accused had no participation, no voice in any thing. Was this such an agreement, to oppose life to life, as the law contemplated? Why, it was reversing all the rights and usages of duelling. If the message relied on as a challenge could be tortured into one, then the accused, as the challenged party, should have had the right to have fixed on all the conditions, which the deceased had himself determined on. The *weapons*, the *distance*, the *time*, and the *place!* These should all have been agreed on and settled.

Now Gentlemen, have we not a right to ask, as you are bound to do, whether there was any such *previous agreement* or compact as the law requires, previously made between these parties, *to fight a duel. Combat* it may have been, and was, I readily admit; but that it was a *duel*, within the provisions of the act, or the code of honor, or the usages of gentlemen, I utterly and absolutely deny.

Can the Commonwealth's Attorney, with all his industry, show in the whole history of duelling from its earliest period to the present day, a parallel case to the one at the bar, which has ever been treated or regarded as a duel?

I have a right, gentlemen, and so have you, to presume that he cannot, or it would have been done. But again:—

Let us suppose that instead of the place selected and mentioned in the message, and where the rencontre did take place, that it had stated that the deceased would at the same hour and day, have been between certain designated points on the main street of Richmond, armed, and with two friends; and that the accused had with his friends, have gone to the same place, as he would have had the right to do, and an *assault and conflict*, such as that which did take place, had ensued in the public streets, would it have been regarded, could it have been, as a *regular duel*, within the *letter* or *spirit of the act?* I venture to say that it would not. And if so, can the place change the whole character of the act, and make that a *duel* at *one place*, which would not have been one at *another* and different place? There is but one answer that can be given, and that is, that it could not. Now in supposing this case, gentlemen, I do nothing unreasonable or improbable—so far from it, I am justified in maintaining that this might not only have been the case, but that in all probability it would have been, but for the disgust which the deceased felt to a public rencontre in the streets, and which had been excited by a supposed anxiety which he imagined a portion of the persons about the streets of Richmond felt, to witness a personal conflict between himself and the accused. Upon this branch of the subject, gentlemen, and one certainly of a painful character, you must have been struck with the evidence of *Dr. Warner;* explaining the object of Mr. Pleasants, for sending such a message to the accused, and for not assailing him, as he had intimated he meant to do, in the public streets. What said that witness—I may not use his precise words, but I will state their substance and meaning. On the night preceding the meeting, which took place on the 25th of February, the witness was in the room of the deceased. He asked Mr. Pleasants why he had sent *such a message* to the accused, (and you will remark that neither the witness, nor the friends of the deceased, ever regarded this affair as a duel,) that he had on the preceding Sunday, promised the witness to do nothing in the matter, until he had heard from *Mr. Lyons;* the deceased replied, "*So I did*—but I went on the street to-day, and saw so many persons standing about who seemed to be expecting me to assault Ritchie, that I would not gratify their morbid appetite, and I determined therefore to do it out of town, or elsewhere." To do what, gentlemen? Challenge him to fight a duel? No! To assault or disgrace him! Is this not conclusive evidence, that the deceased contemplated alone a *simple assault* or personal rencontre, and that it would have taken place in the streets of Richmond, but for the circumstance which I have just stated, and that changing the place to where it finally happened, was the result of accident, and not originally contemplated or designed by the deceased. Was the meeting then solely and exclusively to fight a duel? This is the important enquiry. Now I maintain that it is essential that the circumstances should, to a

moral certainty, exclude every hypothesis but the one necessary to be proved; to wit: *that of a duel fought by previous agreement or compact.* Was such the case here? Now gentlemen, you must bear in mind that the words of the act are "*wilfully and maliciously, or by previous agreement.*" Here, although there is no *express malice* attempted to be proved, the prosecutor relies upon the *previous agreement* to fight a duel, as alone sufficient to make out the *malicious and felonious intent*, charged in the indictment. The *previous agreement*, then becomes essential and vital to be first established; it is not a matter of form, but a part so far as this prosecution is concerned, of substantial and eternal justice—nor is it to be a matter of inference or doubt; it must be proved. You are not even at liberty to enquire whether there may not be reasonable doubt as to its *being a challenge to fight a duel*, but you are to have clear and undoubted evidence, *that it was*, and *was so intended.* For if you have any reasonable doubt as I shall hereafter show, you are bound to acquit.

It is idle then to regard this affair as any thing more than an ordinary *rencontre* or *personal* combat, and if so, I might stop here and maintain that the commonwealth, having failed in proving that there was any *challenge or previous agreement to fight a duel*, or that a duel in consequence of *any such agreement, was fought*, the accused is entitled to a verdict of acquittal.

Upon this first ground then, gentlemen, we might safely rest our defence.

But let us suppose, in the second place, and for the sake of the argument, that I may be wrong in this, and that it was a challenge to fight a duel, and that one was fought, I shall yet maintain, that the accused cannot be convicted or punished, unless the killing amounted to murder in *the first degree*, as defined by the general criminal laws of the State.

And here, gentlemen, I necessarily enter upon a legal discussion of great importance, as well as nicety, and which will need your close and undivided attention; because on it, in a great measure, may turn the decision of this interesting and exciting cause. You will therefore follow me step by step through the argument, which will necessarily be one of a dry and comparatively uninteresting character. Let us then first ascertain what the law of Virginia was, upon the subject of murder, when the Legislature, in the year 1810, determined for the first time to legislate upon the subject of *Duelling*, and provide remedies to suppress it. And allow me here to remark that there are various provisions in this anti-duelling statute, connected with disqualification and disfranchisement from offices of honor, trust and profit, which have had the most beneficial operation, and which have undergone, since the passage of the act, various and important amendments. I will presently show you, that it is to these provisions of the act, and not to the first section, that the law owes all its salutary influence.

The first section, however, which is the highly penal one, has remained unchanged from its passage to the present time; and it is under this section that the accused is now prosecuted. Let me refer you again to the words of that section. "*That any person who shall hereafter wilfully and maliciously, or by* PREVIOUS AGREEMENT, *fight a duel or single combat, with weapons, the probable consequence of which might be the death of either party, and in so doing kill his antagonist, and being thereof lawfully convicted, shall be deemed guilty of* MURDER, *and shall suffer death by hanging by the neck.*"

Now, gentlemen, you will remark, that the words of the law are not, that *a party killing another in a duel, and being thereof convicted, shall suffer death;* but they are, that he shall be deemed GUILTY OF MURDER, and being so adjudged, shall suffer death; showing clearly that the killing must amount to murder, to authorize conviction and death. These words, then, are important to be borne in mind, and essential to the argument which I am about to submit to your consideration on this branch of the case. I maintain, then, in the first place, that when the anti-duelling act passed in the year 1810, there was no offence of *murder*, which by the criminal laws and policy of Virginia, could be punished by death, except *murder in the first degree;* and that the legislature and people of Virginia, had as far back as the year 1796, adopted the humane and benevolent policy that life should not be taken for any homicide, unless it amounted to *murder in the first degree*, and was characterised, as I shall presently show you, by the highest degree of depravity and guilt. That the legislature therefore in 1810, did not intend, in declaring every killing in a duel to be *murder*, to do more than to add *duelling* to the other offences, which under the policy and general criminal statutes of the state, are punishable as *murder in the first degree*, and that the anti-duelling law could not, therefore, have intended the word *murder* as applying to murder in *the second degree*, inasmuch as that offence was punishable by *confinement in the penitentiary and not death.* It being conceded by the attorney for the commonwealth, that no one convicted of killing under the anti-duelling law can be punished *except by death.* It must therefore be death, or acquittal. It conclusively follows, then, that the murder of which a man is to be convicted, under the first section of the anti-duelling law, must be *murder in the first degree.* Now if this be so, let us examine and ascertain what constitutes murder in the first degree, and what were the objects and provisions of the general law, on the subject.

Before the passage of that law, defining murder in the first and second degree, all homicide stood upon the doctrine of the common Law of England, and was decided under it; consequently, every person unlawfully killing another, if done with malice, either express or implied, was deemed guilty of mur-

der. The fact of the killing being proved, the malice was implied, and it was adjudged murder, unless the accused party could lessen it, by showing circumstances of accident, necessity, or infirmity. On this point the law has been correctly laid down by the commonwealth's attorney. The rigor and inhumanity of this doctrine, however, rendered its operation most unjust and oppressive. The natural consequence was, that the innocent as well as the guilty, fell victims to presumptive, instead of real guilt.—Not to the strength of the evidence on the part of the prosecution, but to their own weakness and misfortune. Upon this subject, gentlemen, if I had time, I could surprise and shock you, with numerous cases, reported by English judges themselves, of innocent persons having been convicted and doomed to death, whom it afterwards appeared, were entirely guiltless. The early judicial annals of England, and the books of her elementary writers, are filled with cases of judicial murders, under this loose doctrine of implied malice and presumptive guilt. And I rejoice to know that the whole system of English criminal jurisprudence is rapidly changing under the influence of Christianity and a more liberal and refined state of civilization. Instead now of taking life as they did formerly, for some 160 capital offences, for every simple larceny or felony to the amount of a few pence, it can only be done in a comparatively limited number of cases, and those of the higher grade of crime. Indeed, attempts are making, and may in time possibly succeed, to abolish capital punishment entirely in Great Britain. This, however, is a great question, full of difficulty and interest, and much to be said on either side of it, in a religious, moral and social point of view. That it is gaining ground, however, in England, none acquainted with the state of public feeling there, can doubt. The legislature and people of Virginia, influenced by this wise and benevolent policy, determined as early as '96, to apply a remedy. Our old state, gentlemen, was among the first to take the lead, (in the language of an eminent jurist,) in this glorious work of philosophy and benevolence, under the banner of that meek sect, which does good by stealth, and blushes to find it fame.—Alluding, of course, to good old Pennsylvania, God bless her!

Watchful of the treasure of life, they determined to distinguish between *express* and *implied malice*, and to graduate crime. They determined that thenceforward life should not be taken, but for deliberate and bloody guilt; and that the common felon and midnight assassin should not stand on the same platform with the *misdemeánant*, or with unfortunate and less guilty persons. That this was the leading and humane policy of the Penitentiary system, is clearly proved by the history of the law itself, and its preamble. [Here Mr. Stevenson read the preamble and first section of the general act for the punishment of crimes, in the following words:]

"Whereas, the several offences which are included under the general denomination of MURDER differs so greatly from each other in the degree of their *atrociousness*, that it would be unjust to involve them in the same punishment; Be it enacted, that all murder, that shall be perpetrated by means of poison, or by lying in wait, or by duress of imprisonment, or confinement, or by starving; or by wilful malicious, and excessive whipping, beating, or other cruel treatment, or torture, or by any OTHER KIND OF WILFUL, DELIBERATE AND PREMEDITATED KILLING, shall henceforth be deemed *murder in the first degree*, and shall on conviction, suffer death by hanging by the neck. And all other kinds of murder, shall be murder in the second degree, and be punishable by confinement in the penitentiary, and not by death."

Now, gentlemen, you will remark that the legislature intended to draw a broad and luminous line of distinction between the different kinds of homicide, which could not be mistaken. Indeed, human language cannot be stronger in defining the degree of malice and guilt necessary to constitute murder in the *first degree*, and affixing to it the punishment of death. It must be *wilful, deliberate and premeditated*. These are all essential, and all must concur. *Words*, gentlemen, by the poet are said to be "the fickle daughters of the earth;" but philosophy teach us that they are *things*. In legislation they certainly are, and most important ones, too. Now, a man may kill another, *wilfully* and *intentionally*, and yet not be guilty of murder. And why? Because a wilful act means nothing more than an act done on purpose; and every killing on purpose does not amount to murder. Indeed, it may be justifiable, lawful. A simple case will illustrate this. Suppose a man, in the peaceable pursuit of his business, is attacked by another with a deadly weapon, so fiercely as that he cannot retreat or escape without danger to his own life; he may then kill the assailant on purpose, and the law will justify him. And again. Suppose two men quarrel. On a sudden, one strikes the other a severe blow, and the party struck instantly draws a knife and stabs the assailant, of which wound he dies. Now, the stabbing was *wilful*, but not being *deliberate* and *premeditated*, by the law it is declared not to be murder. There is, then, a second ingredient to constitute murder, and that is, it must be *deliberately* done. This is one step higher in the scale than *wilfulness*. Now, *deliberation* means caution,—advisedly,—not hastily,—or rashly. It is used in common to denote a settled purpose. But here again, both *wilfulness* and *deliberation* will not do—inasmuch as the law calls for another, and still more important requisite, to constitute murder in the first degree, and that is, that the killing must be *premeditatedly* done. Now, this word *premeditation* was carefully selected by the legislature, to have full effect, and to enter largely into the definition, which they meant to give to murder in the *first degree*, and for which alone life was

to be taken. It implies something more than deliberation. If it did not, why was it used in the law? Besides forecast, or forethought, *premeditation*, in connexion with crime, means previous deliberation; a plan of execution formed, in the mind, with a view to choice of means. That the party accused of the murder had not only preconcerted his means, but *premeditated* his plan—had gone to the place and sought the occasion to gratify his malignity and consummate his guilt. This is the just and common sense view of the law, however attempts may be made to restrict it as to time, and merge it in the word *deliberation*. Indeed, the construction which has been put on it by some of the judges of Virginia, and especially in Whiteford's case, reported in one of the Virginia Reporters, is not that which will be sanctioned by the juries of this country. It breaks down all distinction between murder in the first and second degree, and defeats the very object of the law. Now, gentlemen, I do not wish to be misunderstood. I do not mean to say that the words in the statute, "*any other wilful, deliberate and premeditated killing*," are to be understood as if the words "SUCH OTHER" had been used; inasmuch, as that would have been to confine all murder in the first degree to no other kind of killing than that enumerated in the cases of lying in wait, poison, torture, &c. Besides these enumerated cases, I admit that there may be other wilful, deliberate and premeditated killing, as atrocious as the instances enumerated, and which might amount to murder in first degree. I need not specify them; but yet I do maintain, that whatever these other kinds of killing may be, they must yet be all wilful, deliberate and premeditated. The proof must shew them to be such, or it is not murder in the first degree. All other murder, at the common law, will be murder in the second degree. Hence, in cases of murder in the first degree, the commonwealth must prove the *wilful, deliberate and premeditated* killing, or the prosecution fails. In murder in the second degree, the malice may be implied, and the accused must reduce it by showing it not to be murder, but a less offence—if one at all. In one case, the burden of proof is on the country—in the other, on the accused. But, gentlemen, the right of deciding upon the law, as well as the facts belongs, and rightfully too, to you alone—not to the judges. And I trust in God, that the life or liberty of no man in this country will ever depend upon the opinion of judges, either on the law or fact. I care not how learned or exalted they may be. In cases relating to property it may all be well enough, but not in criminal prosecutions. We know the fatal effects in other countries, and happily it has been guarded against in ours.

I protest, then, against the guilt or innocence of any man being pronounced by a judge. Who will consent, that under the forms of law, *homicide* may be committed? Will any directions from a judge excuse it? I would sooner perish upon the rack, if I were a juror, than conform to the decision of any judge that ever lived, by condemning a man whom I thought deserved to be acquitted, much as I might respect the judge who pronounced a different opinion. In criminal cases, judges have nothing to do with the law or facts. If so, why have we juries? Why, but because they are men of our own condition, indifferently chosen for the occasion, having a fellow feeling for us, so that no standing jurisdiction or permanent tribunal is to be employed to dictate the fate of any individual. It is a wise and humane regulation, that a jury should interpose between the public and an individual, both as to law and fact. The charters of our liberties secure it. It must therefore be held sacred. All is safe, whilst decisions are made on the side of tenderness and mercy.

Will you pardon me for a moment, gentlemen, whilst I attempt to illustrate the import and meaning of this word *premeditation*, by its use in connexion *with* crime, and more *especially* blood. Now some of you, gentlemen, I know, and probably all, are in the habit of reading, besides the *Good Book*, the writings of Shakspeare; a man more remarkable probably than any that ever lived, for his intimate knowledge of human nature, and his skill in displaying all the passions, good and bad, which belong to our nature. This great painter of human passions, will aid and instruct us in the use of this important word. In one of his historical plays, he draws the picture of a young and ambitious tyrant, scheming to reach the throne of an ancestor through treachery and blood. There were many lives between him and the object of his unholy ambition, and oceans of blood to be first shed. How to accomplish this was the difficulty—and in this state of doubt and hope, the poet makes him exclaim, in a part of a meditative soliloquy:—

"A cold PREMEDITATION for my purpose."

Yes, it was *premeditation;* a cold *premeditation* that was invoked to aid him, in hewing with his bloody axe, his way to the imperial crown.

And again, take our Saviour's beautiful and instructive parable, in which he says, "*That when a king is about to war, he must first sit down.*" And wherefore, but because it was an act that would enable him to consult; lead to *premeditation;* enable him first to count the cost and consequences of a contest of blood.—This is the meaning of the parable, and that this was the sense in which the Legislature used the *word*, is conclusively shown by the provisions of the act itself, and the motives under which they acted. Let us take, gentlemen, the cases of killing by *lying in wait, poison*, or *torture*, by way of illustration. They who murder by these means, must do it *wilfully, deliberately*, and *premeditatedly*. They previously weigh and determine on the deed, and beforehand, decide on the choice of means. They select the kind of *poison most fatal*, or

the torture or instruments *most effective;* and hence, unite all the ingredients, which constitute the highest degree of atrocious and bloody guilt. And in nothing is the wisdom and justice of our criminal code so strongly manifested, as in the *rigid, accurate, cautious, explicit,* and *unequivocal definition* of what shall constitute *murder in the first degree.*

Gentlemen, need I tell you that all crime consists in the purpose of the human will, producing the act. That the maxim of the law is, "*actus non facit ream, ni si mens sit rea.*" That the act does not constitute guilt, unless the mind participates. The law does not make the fact of killing either in a duel, or otherwise, criminal, without the wicked and malicious intent. It is that which constitutes the *essence of crime.* It is not the act alone, but the *malice* from which it springs. You must set then upon the heart of the accused; you are to search for the intention from all the facts and circumstances, and are bound to believe in your consciences, that he is guilty of a malicious and premeditated killing, before he can be convicted. This is the principle which creates all the degrees of homicide, from that which is justifiable, to the malignant guilt of murder. The fact is the same—the killing is the implied crime, but the intention makes all the difference, and he who kills another, is pronounced a felon, a murderer, or an unfortunate man, as the circumstances by which his mind and heart are deciphered to the jury, show him to have been wicked and murderous, or only stirred up by sudden passion, or human infirmity. This is the great principle which has been well said, to stand at the top of the criminal page, and run through the whole of our humane system of laws.

As well might it be said, that the *intention* without the *act* would constitute the crime, as the *act* without the *evil and criminal intent.* We are told, gentlemen, from divine authority, that "he who looks upon a woman to lust after her, commits adultery in his heart." This is *crime* in *thought,* but this cannot be reached or punished by human laws. Evil thoughts may, and often do exist, and yet leave the mind and heart *untainted,* and if unaccompanied by acts, they cannot be punished by human tribunals.

When the serpent had tempted our first mother in her dreams, to eat of the forbidden fruit, and she complained to Adam, he comforted and consoled her, in the language of the immortal poet:—

"Evil in the mind of God or man, may come and go,
And leave no spot or stain behind."

Act and *will* must then unite, to constitute crime by human laws.

I maintain then, gentlemen, that death cannot be inflicted under the general law, except for murder in the first degree; that by the anti-duelling statute, the *murder* of which the party must be convicted, and the punishment of which is death, can be *none* other than *murder in the first degree,* and consequently, that the same degree of malice is necessary, as well under the *duelling law,* as the general criminal law of the State, to punish with death.

For no one can imagine, that whilst the common felon and midnight assassin, cannot be convicted except on clear proof of express malice, an individual in fighting a *duel* in vindication of what he may regard as his honor and reputation, shall be hanged under the notion or fiction of law, that malice is to be *implied* in the bare *agreement to fight.* How many duels might and do take place, without the slightest malice, and with no wish or intention to kill. Let me suppose the case—*A* and *B* quarrel; a challenge to fight is given and accepted; *B,* the party challenged, goes to the field (on a point of honor, mistaken if you please,) with no intention to take the life of *A,* but to prove that he is not a coward, and with a fixed determination to throw away his fire. They meet; *A* fires first, and in doing so, draws the fire of *B,* against his intention, and thus accidentally *A* is killed. This, gentlemen, is no imagined case; I will show you presently, that it often happens, as it did happen in the particular cases to which I shall feel it my duty to refer you. Now according to the argument of the Attorney for the Commonwealth, and his construction of the law, such a case would be murder in *B.* The bare agreement to go out and fight a duel, is relied on as evidence of the malice, and although the killing might be wholly accidental, and produced by *A, B* is to be adjudged guilty of murder, must forfeit his life, and be hanged as a common felon. Who is there; what Virginian, that will acquiesce in any such doctrine? None! None! I feel authorized then in contending, that the Legislature did not intend to let the common law doctrine of *implied malice,* remain in force as to *duelling* or murder in the first degree; but that they intended to require the same degree of malice in a *duel,* as for any other *killing* arising under any ordinary rencontre or combat. They intended that the act of killing, in the language of one of the ablest of the English Judges, should not only be attended with the ordinary circumstances which denote a wicked, depraved, and malignant spirit, but a heart devoid of all social duty, and fatally bent on mischief. This is the just and legal definition of malice, without it, the life of no man can be taken by the laws of Virginia. The charge in the indictment is, that the accused did *wilfully, deliberately* and *feloniously,* of his *malice aforethought,* kill and murder, in violation of the statute, and against the peace and dignity of the commonwealth. The *malice* then must be proved as charged, before the case can be brought within the accusing letter, or spirit even, of the statute.

What do you imagine, gentlemen, would be the feelings of those who may be now living, and who aided in passing the anti-duelling law, if they could hear us this day discussing gravely the question, whether their sons, in defending

their reputation and character in a fair personal combat, were to be considered as common murderers, and to be hanged as midnight assassins, if forced to kill an adversary? I leave the answer to your own feelings and hearts, and those of the amiable and worthy gentleman who conducts this prosecution.

Here then, in the second place, I might stop, and safely rest the case for the accused.

But to make it still more clear and conclusive, let us admit, by way of argument, that in all this we are wrong, and that the intention of the law, as the Attorney for the Commonwealth maintains, was, that the *previous agreement to fight* should in the absence of other evidence, be taken as *proof of implied malice and a design to kill*, I shall then maintain that this implication cannot operate in the present case, inasmuch as the whole body of evidence, as well on the part of the country as the accused, shows clearly and conclusively, that there was *in fact no malice whatever* on the part of the accused; that he had no wish or desire to take the life of the deceased, but that the killing was forced upon him as a matter of necessity, under peculiar circumstances, and in *defence of his own life*. That it was, therefore, purely a case of self defence, and justified by all laws, human and divine.

Let us then proceed, gentlemen, to a review of the facts and evidence in the cause. And in doing so, I shall assume in the commencement of the examination, the fact, that the accused was not the aggressor in this affair; that he neither sought, invited, or desired the meeting, or the rencontre which took place. This has not been pretended. On the contrary, he acted throughout the whole of the unfortunate affair alone on the defensive.

And here we are met by the argument of the Attorney for the Commonwealth, as to the fact of the accused having gone to the ground, knowing what was to take place. Indeed, it is asked, why did he consent to go? Why did he not, as he might have done, refuse to go? I'll tell you, gentlemen, why he went, and why he was bound to go—why he could not have refused, without irreparable injury and eternal disgrace. His own safety and honor demanded it; and if he had refused, both would have been jeopardised. Situated as he was, how could he have acted otherwise? Who is there stoic enough to have calmly sat down and refused to have acted as the accused did?

Is there any man who believes that after the threats which were made by the deceased, and communicated to the accused; after hunting him for days through the city, for the avowed purpose of *disgracing* or *assaulting* him, that if a rencontre had taken place, and the deceased had been killed by the accused, it would not have been justifiable homicide?

Examine, gentlemen, the state of the parties and the consequences that must have resulted if the accused had refused to have gone, or shown himself on the fatal morning of the 25th.

Could he have refused to do so, either in relation to his personal safety or without dishonor and disgrace?

If he had not gone, what must have resulted? Is it not demonstrable from the facts, that Mr. Pleasants would never have been satisfied until he had disgraced the accused by personal insult, or assault, or the accused have withdrawn the opinion which he seems to have entertained of the deceased, under menace and fear?

Would his refusal not have been construed into an act of cowardice, and he doomed to have been posted, and his name bruited as a coward and paltroon throughout the country? Would not the accused have been a prisoner in his own house?

He must have felt and known that he would have been liable, on sight, to be attacked, and his life in continual jeopard. The sword of Damocles was to be forever suspended over his head!

Did not the acts and declarations of Mr. Pleasants prove that he was desperate, and bent on attack? Did he not declare to Dr. Warner at one time, that his object was to disgrace the accused by *slapping his glove in his face*, and at another, that he would have the blood of the accused, or the accused should have his?

Who, gentlemen, could listen to the evidence of Mr. Wickham, so remarkable for the lucid and impressive manner in which it was given, and doubt the purpose, fixed and resolute, of the deceased, to assail the accused, at the sacrifice of the lives of both? You cannot fail to remember the state in which Mr. Wickham represented the deceased on the celebration of Washington's birth-day. What deep excitement he was under. Prepared and anxious on the public square, and in the face of the military company, of which the accused was an officer, to attack and assault him. And you will bear in mind that it was owing to the representations of that gentleman, that the deceased was induced to abandon all idea of assailing the accused on the square, and admitted, with frankness, that public sentiment, he believed, would not sustain him in making an attack at such a time, and under such circumstances. Now, of all this, gentlemen, the accused was apprised, and put on his guard. You will also bear in mind that the deceased, in conversation with Mr. Wickham on that day, complained and gave as an apology for *thus seeking the accused on the square*, that he had not been able to find him elsewhere, and that he was a coward. Not in these words, I admit, but yet in a manner to leave on the mind of the witness, as he declared, the irresistible impression that such was the opinion of the deceased,—that the deceased did mean to say that the accused had avoided him through cowardice or fear.

In such a situation, and under such circumstances, what was the accused to do, but exercise his right, and show that he was *not afraid of meeting the deceased*? He went, however, I must repeat to you, gentlemen, with no malice, and with no determination to seek or invite

a conflict. So far from it, there is not a scintilla of proof to justify any such inference. He went to defend himself if attacked. To prove that he was no coward. That his motives in not seeking the deceased, or shunning him, had been misconstrued. That he was therefore, not afraid to meet the deceased, at any time or in any place. Gentlemen of the Jury, let us imagine for a moment, what must have been his reflections on receiving this message. He doubtless, reasoned with himself after this fashion :—I have done everything which I ought to do to avoid a personal rencontre with this individual. I know that he has sought me in every direction, with a view to an assault. That he is determined to disgrace me if he can, or take my life. He has expressed the opinion that I avoid him from fear and cowardice. Am I not the second officer in a military company, now ready and prepared to offer its services to the country if it should be forced into war? To maintain my character in that station, I must be respected. When called on to lead others into honorable danger, I must not be supposed to be a man who had ever sought safety by submitting to what the world considers a disgrace. What is it that stimulates the patriot and warrior to serve and defend his country? What that urges man against man —armies and navies against each other? What, that has made the valor and name of my country respectable in every quarter of the globe? What, but that principle which makes a man sacrifice his life in vindication of his reputation and honor, and the esteem and good opinion and love of his fellow men? A principle impressed upon the heart, and which is the parent of every moral duty, and awakens every sentiment that is good and great. I know that in the eye of religion and reason, obedience to law, though against the feelings of the world, is a high duty; but on putting a proper construction on my motives and conduct, all will make a proper allowance for my situation. I am therefore compelled by the feelings of a gentleman and an officer, not to shrink from this interview.

Had he not then a right to go, and ought he not to have gone? And here, gentlemen, I must ask your attention to the argument used by the Attorney for the Commonwealth, as to the causes which produced this meeting on the part of the deceased. And what did he tell you as to the motives which justified Mr. Pleasants in taking the course he did, and inviting the rencontre? [Here Mr. Flournoy, the Prosecuting attorney, said that he did not use the word *justify* or *justification*, nor did he say, or mean to say, that he justified Mr. Pleasants' course.] Well, gentlemen, be it so. I certainly do not wish to misrepresent or misunderstand the gentleman. I don't say, nor did I, that he used the word *justification*, but I do say, and have a right to maintain, that his argument went to prove that the deceased was driven to do what he did, and that in doing so he was *excusable*, if not *justifiable*. I care not which. Either is sufficient for my purpose. The argument was, in effect, this, or it was worse than idle and vain; and of this, the gentleman is incapable. What was that argument? Did he not say that the deceased had hunted the accused for days through the city, with a view of assailing him, or getting satisfaction. That with that view the deceased had repeatedly, not only passed the office of the accused, but had gone to the places where he was most likely to be found, without being able to meet with him, and that if he had succeeded in finding him, a *rencontre* or *conflict*, much less fatal than that which actually occurred, might have taken place. He said further, gentlemen, as you will remember, that the deceased had been charged by the accused with cowardice; an insult which no spirit like his could endure, and having nothing but his reputation and good name to leave as an inheritance to his children, and stung to madness by such a charge, he could not sit down under it, but was forced to do what he did, and that was to propose the meeting of the 25th. Now, gentlemen, was not this the substance of the argument of the Commonwealth's attorney, and if so, to what does it amount, but to excuse or justification? I have a right then to claim for the accused, the full benefit of this argument, and under it, to justify him in going out. I say that he had not only the right to go, but that if he had not gone, *under the circumstances*, he would have been in public estimation, in the community in which he lived, a disgraced and degraded man, the object of obloquy and scorn. Indeed, what is there that could ever have hushed that clamor, which trumpet-tongued would have proclaimed him to the world a coward, or snatched him from its fatal curse? Nothing! Nothing on earth! He accordingly went to the fatal ground, and when there, what was his conduct? Did it evince, gentlemen, any malice, or the least desire to shed the blood of the unfortunate individual who there met his death? On the contrary, was it not calm, manly, and dignified :—Might I not say, distinguished throughout, not less by humanity than valor?

Who is there, that can look on the generous magnanimity and high-minded disinterestedness displayed by the accused, at the risk of his own life, and not see, that there was a total absence of every thing like a desire to take the life of the individual who assailed him? If this was not so, why did the accused wait until the deceased came within the distance of twenty-five or thirty yards, before he began to fire?

Is it not evident from the ground, and the distance, that the accused might have been killed, with the first pistol shot of the deceased, more than *one hundred and fifty yards* from the place from which it could have been fired? Did not the ball from that pistol, strike the house in the rear of the accused, at more than *two hundred yards* distance from the place it was fired from? If it had struck the accused as it passed, must it not have killed him?

Is it not fair then to infer, that the accused waited until the last moment before he discharged either of his pistols, in the expectation that the accused might be arrested by his friends, or abandon his rash attack? And bear in mind, gentlemen, that the call had been made to Mr. Pleasants to stop, by Messrs. Archer and Greenhow, as well as Dr. Warner and Mr. Deane, and he had declined doing so, before the accused discharged his first pistol; or at least, that the *calling and firing*, were simultaneous.

Is it unreasonable, or unfair to suppose, that when he commenced firing, and the deceased was so near him, and advancing rapidly, that his object was to take the chances of *disabling*, or *wounding him*, so as to arrest his progress, rather than taking his life?

Indeed, had not the accused it in his power, when in close conflict, to have taken the life of the deceased, with the greatest ease? And here gentlemen, you will bear in mind, that it is clearly proved, by all the evidence and circumstances in the cause, that the accused had no reason to believe that he had wounded the deceased by the fire from his pistols. The truth is, and I have no doubt of it, that he did not know his fire had taken effect, until the conflict had ceased, and the deceased fell. None of the witnesses state that they knew it. There was no blood apparent; nothing to indicate it!

You have seen, too, the sword of the accused, which it is admitted, he used, and you must be satisfied, with what ease he could have taken off the head of the deceased, or ran him through the body, if he had been so disposed. Many of the witnesses concur in saying, that he could easily have taken his life, during the conflict, and at its close. Indeed, the deceased himself, when asked why the accused *had not killed him with the sword*, replied, that *he did not know;* thereby admitting clearly, that it could have been done.

McGee, one of the commonwealth's witnesses, also tells you, that he saw the whole of the conflict; that the accused used his sword, only in defending himself, and fending off the attack of the deceased, who was lunging at him with his sword, and that the accused could then, if he had wished it, have killed the deceased, by running him through the body.

The whole body of evidence, shows that the object of the accused was not to kill, unless absolutely necessary, but simply to protect and defend his own life.

And this brings us to the enquiry, whether he had not the right, and was not bound to do so,—at every hazard. The right of self-preservation! I need not, I am sure, repeat to you, gentlemen, that this right, is the first which belongs to man, and comprehends all others—that it is co-existent with life itself, and runs through all its periods—that without it, we could perform no duties, enjoy no rights. Do you need that I should confirm this by authority? If so, I have them at hand. It may not be apart from my duty, that I should refer to them. I propose then, briefly to do so.

Grotius, in his celebrated treatise on the Rights of War and Peace, thus speaks of the right of self-defence, or private war.

"We have before observed, that if a man is assaulted in such manner that his life shall appear in inevitable danger, he may not only make war upon, but very justly *destroy* the aggressor; for it is to be observed that this *right*, or *property of self-defence*, is what *nature* has implanted in every creature, without any regard to the *intention of the aggressor;* for if the person be no ways to blame; as for instance, *a soldier on duty*, or a man that should *mistake one* for *another*, or *one distracted*, or a person in a *dream*, (which may possibly happen,) I don't therefore lose that right that I have of *self-defence;* for it is sufficient that I am not obliged to suffer the wrong that he intends me, no more than if it was a man's beast that came to set upon me."

Again—"But what shall we then say of the danger of *losing a limb, or a member?* When a member, especially, if one of the *principal*, is of the highest consequence, and even *equal* to *life* itself; and 'tis besides doubtful, whether we can survive the loss; 'tis certain, if there be no possibility of avoiding the misfortune, the criminal person may be *lawfully and instantly* killed."

"Wherefore, as we have remarked elsewhere, if I cannot otherwise save my life, I may by any force whatever, repel him who attempts it, though perhaps he who does so, is not any ways to blame. Because, this *right* does not properly arise from the other's *crime*, but from that *prerogative* with which nature has invested me, of defending my own life."

And again—

"So is he reputed innocent by the laws of all known nations, who by arms defends himself against him that assaults his life, which so manifest a consent, is a plain testimony that there is nothing in it contrary to the law of nature."

"The danger, however, must be immediate, which is one necessary point. Though it must be confessed, that when an assailant seizes any weapon, with an apparent intention to kill me, I have a right to anticipate and prevent the danger." So much for Grotius.

The celebrated *Aquinas* too, observes—"that in actual self-defence, no man can be said to be purposely killed. Indeed, it may sometimes happen that there is no other way for a person to save himself, than by designedly doing an act, by which the death of an aggressor must inevitably ensue. Yet here, the death was not the *primary object* intended, but employed as the only means of security, which the moment supplied. Still it is better for the party assaulted, if he can safely do it to *repel*, or *disable* the aggressor, than shed his blood."

And it is upon these great principles of natural law, gentlemen, that social laws are

based. I will now confirm this by the writers on the English common law.

Foster, one of the ablest judges that ever sat on a British bench, tells us, "that a party may repel force with force, in defence of his person, habitation, or property, against one who manifestly endeavors with violence and surprise to commit a known felony upon either, and in these cases, he is not obliged to *retreat*, but may *pursue* his adversary till he find himself out of danger; and if in the conflict, he happen to kill, such killing is in justifiable self-defence." And—

Blackstone lays down the doctrine with equal clearness. "Self-defence, that excuses homicide, is that whereby a man may protect himself, from an assault, or the like, in the cause of a sudden quarrel, by killing him who assaults him; but it must appear that the slayer had no other possible (or at least probable) means of *escaping* from his *assailant*. The party however, assaulted, must flee as far as he conveniently can, or as far as the fierceness of the assault will permit him; or if it be so fierce as not to allow him to yield a step, without manifest danger of his life, or *enormous bodily harm*, he may *then*, in his defence, kill his assailant instantly."

And such is the law, as laid down by Hale and Hawkins, and most of the modern compilers of criminal law, both in England and this country. Such too, is the moral law. In the second volume of *Paley's Moral and Political Philosophy*, it is thus stated. "There is one case in which all extremities are justifiable; namely, when our life is assailed, and it becomes necessary for our preservation, to kill the assailant. This is evident in a state of nature; unless it can be shown, that we are bound to prefer the agressor's life to our own; that is to say, to love our enemy better than ourselves; which never can be a debt of justice, nor any where appears to be a duty of charity."

And Lord Bacon, declares—"That the preservation of a man's good name from shame, and infamy, is one of the principal cares of the law, at the head of which, he places the securing a man's person from violence and death."

These are the great principles upon which all human laws are founded.

But it may be argued by the attorney for the commonwealth, that under the principles laid down, the accused should first have retreated as far as he could, with safety, and then if pursued, might *lawfully have killed*. Now the meaning of all this gentlemen, is simply this, that when the deceased came rushing on him, with his pistols in hand and sword under his arm, the accused should have dropped his arms, and *taken to his heels*, or *leaped into the water* and saved himself by flight. That he should *have ran!* The law uses the word *flee* or *retreat*, but here it must have been *running*, and that pretty quickly too, to have been effectual, and have avoided the impending danger. This retreating then which the cases allude to, means nothing more or less, *than running away*, and would you, gentlemen, religious and moral as you are, would you have had him to have done so? According to the principles of the good Book, I have a right to ask you to mete to the accused the same measure that you would under similar circumstances, desire to be meted to yourselves. Would you have retreated or fled under such circumstances? Is there one man on this jury or in this crowd, I care not who or what he is, that would have done so? Is there one of you that would have had one of your sons or relatives to have done so? Would life have been worth preserving at the risk of such eternal infamy and disgrace? Better, far better, to have sacrificed a thousand lives, if you had them. I almost blush when I ask such questions of high-minded and honorable men—of Virginians! But if you would, gentlemen, I'll tell you who would not—*your wives and daughters!* Put the question to them, when you go home, and ask them (and they are safe counsellors in matters of honor and character as well as in all others) whether they would have had a son of theirs or the husband of one of their daughters to have taken to his heels and saved his life by an ignominious and disgraceful *flight*. I'll tell you what their answer would be. Just that which the celebrated matron of old gave to her son when presenting him with a shield, on the eve of his departure for battle. Take this my son, *and return with it or upon it!* In other words—return with your honor unstained, or return no more! This would be the language of every Virginian, every American mother, worthy of her sex, and of the feelings which belong to the character of woman. Where is the father, or mother, then, who would consent to give a daughter to a man who, under such circumstances, was unable or unwilling to defend his own life or honor! Such certainly was not the accused. Every thing forbid it. He was an officer—a gentleman—one whose whole life had proved that he "scorned to fear, and knew not how to *fly*." Is there, then, gentlemen, an atom of malice shown on the part of the accused, whereon to ground a charge even of manslaughter, much less murder *in the first degree*. Well might we defy the labors of the most subtle metaphysician of the traduction of crime, to draw from it anything that the most virtuous and upright man that ever lived might not have done! It was a terrible alternative I admit, to be doomed to sacrifice one's own life, or shed the blood of a fellow man. But there was no choice. None! It was purely a case of self-preservation and therefore justifiable. And how often is it, gentlemen, that a due regard to this principle of nature, compel men to do extraordinary things, which under other circumstances could not be justified. Take the case of a shipwreck, where two men having seized the same plank, which cannot support the weight of both. Now, it is maintained, and I believe correctly, that either may push off the other to save his own

so; but we shudder at the thought, though compelled to admit that it is just, and we must all deplore the misfortune of a man, reduced by the necessity of destroying an innocent fellow creature to save his own life! But he would not be justified if he pushed his companion into the sea, merely that he might place himself more commodiously; and still less would he be justified if he acted from malicious motives, or because he was the strongest. The killing then here, was a case of self-preservation and as much justifiable as if the deceased and the accused had been on the same plank, and the question was, who should perish.

I have a right then to say in the second place, that the prosecution has failed, and to ask a verdict of acquittal on my second proposition.

But thirdly and lastly. If we were to admit that this was a duel, within the letter and meaning of the statute, I deny that it can or ought to be enforced in a case like the present. And here, gentlemen, let me say that the Legislature which passed that law, nor the people whom they represented, ever expected that the *first section* declaring a man who should fight a duel, guilty of murder, and subjecting him to death by hanging, would or could be enforced, except under peculiar circumstances and in cases of a foul and atrocious duel. It was doubtless intended that whenever by a species of compulsion or foul conduct, a duel should be forced on or precipitated for some trifling or pretended offence, but in fact where the the party killing was clearly urged on by malignant and bloody motives to shed the blood of another, under cruel and unjustifiable circumstances, though under the cloak of a duel, the law should and ought to be enforced, and the party, if convicted, punished. And in such a case I venture to say it will and ought to be done. Such a duel might, indeed, be murder and in the first degree! Farther, it could never have been expected, that this section of the act could be enforced. If proof of this be required, it is to be found in the fact that 36 years have elapsed since the passage of this act, and this is the first attempt that has been made to enforce it, numerous as the duels have been since its passage. The object of the law gentlemen, was *prevention*, not *punishment*.—The Legislature intended to suppress the practice of duelling, not by holding out the terror and punishment of death, but by appealing to those feelings and passions, which give rise to the practice. Ambition, fame, power, and disfranchisement, were to do the good work—one pas- law has been attended with the most sulutary and sion counteract another. And, in this way, the beneficial effects, and greatly lessened the number of duels in Virginia. How vain then the thought of suppressing duelling by *laws* making it *murder*, whilst our *manners* legitimate it! All legislation, gentlemen, must be framed to suit the people, and the circumstances of the country, and not the vain attempt to force the nature, the temper, and the inveterate habits of a nation (and that a free one) into conformity with speculative systems, concerning any kind of laws. This is what experience teaches, and what all practical statesmen know. I speak plainly, gentlemen, but I speak nothing new.

But, gentlemen, I beg you to understand that I do not mean in what I have said or in what I may say on this occasion, to defend or uphold duelling. Far otherwise. We must all be sensible that it is a great evil; one unfortunately that can only be nourished with blood, and finds employment in inflicting misery and death on mankind.

But we all know that there are *situations and occasions* in which it is not only regarded as justifiable by the larger portion of society, but as it would seem, demanded by public sentiment. Most of us, gentlemen, when the evils of this practice are uppermost in our minds, are prevented from noticing the fact which history and experience teach, that it has often proved the corrective of equal, if not greater immorality. All history teach us that it superceded at one period *private assassinations*, and that the world were indebted to it not only for the polish which it gave to society, but for that courage and demeanor which distinguished most of the civilized nations of the old world. That a man may not kill another, unless in self-defence, without incurring the crime of murder, is contrary both to law and fact. It may be done in defence of personal property, on a nocturnal assault; by a soldier on sentry; or an officer, to prevent a rescue. In these cases, you may lawfully kill. Such is the law. And if under such circumstances it is permissible, do you not place a man in a painful dilemma, if when a living outcast from society; exposed to daily insult; shunned by friends; met by the blushings of relatives, and the tears of children, you shackle and deprive him of the only means in the opinion of society to wipe away these stains and vindicate his reputation and character before the world. The analogy of the law; the reason of the thing; and the feelings of mankind, are against it.

Gentlemen, among all the imperfections of human institutions, there are none probably more striking or more to be deplored, than the inadequacy of laws for the prevention of *personal insult*. To prevent the commission of offences against the decorum and peace of social life, *Courts of Honor* have often been suggested, as I shall presently show you, but could never be adopted; because from the very equivocal manner in which insults and personal wrongs are offered, it would be utterly impossible to ascertain the degree of offence, so as to be enabled to apportion the necessary punishment. To prevent, however, character and reputation from being assailed with impunity, the laws against premeditated killing are by the invariable practice of Courts and Juries, both in England and America, relaxed in favor of duellists, who are generally, nay, almost always, acquitted of *the crime of murder*. This

amelioration of the law, however it may be occasionally too indulgent to the original instigator of a dispute, and which too often terminates in the shedding of blood, is still regarded as the adoption of the least *of two evils;* for if there was no check to the indulgence of that too general and malignant feeling which vents itself in brutal insolence or outrage; or is evinced by more covert, but equally irritating offence, the repose of society would be perpetually outraged by the folly and passions of irritable and ungovernable men. These suggestions, gentlemen, must come home to the bosoms and minds of us all, and in throwing them out on this occasion, in the discharge of a high and solemn duty, let it not be supposed that I am injuring the cause of morality, or that I do not admit the wisdom, dignity and amiableness of the Christian maxim of forbearance and forgiveness of injuries. Far—far otherwise. This most difficult and dignified conduct will, I fear, be but rarely the practice of poor human nature, and even if it were more prevalent, the feelings of the virtuous should not be suffered to be wounded with impunity. Hence, experience has only proved that no expedient has yet been devised more effectual in checking this crime, than the partial permission, under public sentiment, of duelling. And it has consequently been tolerated and endured, alone, however, as a *necessary evil.* That such is, and has ever been the case, it is my duty now to proceed to show you, from the highest authority both in law and morals.

"In deliberate duelling," says Blackstone," "both parties meet avowedly with an intent to kill." (In this, however, the learned commentator is mistaken, for many go to the *field in duels,* who do not *intend to kill.*) "Thinking it their duty as gentlemen, and claiming it as their right to wanton with their own lives and those of their fellow men, without any warrant or authority from any power, either divine or human, but in contradiction to the laws both of God and man. *Yet it requires such a degree of passive valor to combat the dread of undeserved contempt arising from false notions of honor, too generally received in Europe, that the strongest prohibitions and penalties will never be effectual to eradicate this unhappy custom, till a method be found out of compelling the original aggressor to some other satisfaction to the offended party, which the world shall esteem equally respectable as that which is now given at the hazard of the life as well of the person insulted, as of him who hath given the insult.*"

And Beccaria, on crime, says, "*Death* is an absurd punishment for *duelling;* because they that will *fight,* show that they do not fear *death.* He thinks the aggressor should be punished, and the defendant acquitted; because the law does not sufficiently secure his honor, but leaves him in a state of nature to defend it by himself."

In the works of that remarkable man, *Sir John Selden,* whom Grotius styled the glory of England, and Chancellor Kent of New York, the "*wise* and good," we find the subject of *duelling* thus touched: "A duel may still be granted in some cases by the laws of England, and only there. That the Church allowed it anciently, appears by this; in their public liturgies there were prayers appointed for the duellist to say, and the judges used to bid them go to such a Church and pray. But whether is this lawful or not? If you grant any war lawful, I make no doubt but to convince you war is lawful, because God is the only Judge between two, that is supreme. Now, if a difference happen between two subjects, and it cannot be decided by human testimony, why may they not put it also to God to judge between them? Nay, what if we should bring it down, for the argument's sake, to the swordsmen;—one gives me the lie; it is a great disgrace to take it; the *law has made no provision* to give remedy for the injury, (if you can suppose any thing an injury for which the law gives no remedy,) why am not I in this case supreme, and may therefore right myself?

"2. A duke ought to fight with a gentleman; and the reason is this; the gentleman will say to the duke, it is true you hold a higher place in the state than I do; there is great distance between you and me; but your dignity does not privilege you to insult and do me an injury. As soon as ever you do me an injury, you make yourself my equal, and as you are my equal, I challenge you, and in sense the duke is bound to answer him. This will give you some light to understand the quarrel betwixt a ruler and his subjects; though there be a vast distance between him and them, and they are to obey according to their contract, yet he hath no power to do them an injury; then they think themselves as much bound to vindicate their rights as they were to obey his lawful commands; nor is there any other measure of justice left upon earth but arms."

The doctrine thus asserted, gentlemen, in the commencement of the 17th century, is still looked to and practised upon in Great Britain at the present day. Let me refer you to a striking case. It was only some years since that a royal duke at the head of the army, and as its commander-in-chief, felt himself constrained by public sentiment to give satisfaction to a subordinate officer under his own command in a duel. [Mr. Stevenson here referred to the following account of the duel from the British Annual Register, Vol. 41, p. 208–9.]

"A dispute lately happened between the Duke of York and Colonel Lennox, which determined yesterday in a duel. The dispute originated in an observation of his royal highness, namely: *That Colonel Lennox had heard words spoken to him at the club, to which no gentleman ought to have submitted.* This observation being reported to Colonel Lennox, he took the opportunity whilst his royal highness was on parade, to address him, desiring to know what were the words which he submitted to hear, and by whom they were spoken.

To this his royal highness gave no other answer than by ordering the colonel to his post. The parade being over, his royal highness went into the orderly room, and sending for Colonel Lennox, intimated to him in the presence of his officers, that he desired to derive no protection from his rank as a prince, and his station as commanding officer; but, that when not on duty, he *wore a brown coat*, and was ready as a gentleman, to give the colonel satisfaction. Some correspondence then took place, which, not proving satisfactory, a message was sent desiring a meeting, and the time and place were then settled. The parties met at Wimbledon Common. The ground was measured at twelve paces, and both parties were to fire upon a signal agreed on. The signal being given, Colonel Lennox fired, and the ball grazed his royal highness' head. The Duke of York did not fire. Lord Rawdon then interfered, and said he thought enough had been done. Lieutenant Colonel Lennox said, that his royal highness had not fired. Lord Rawdon replied, it was not the Duke's intention to fire. He had come out to give Colonel Lennox satisfaction, and had no animosity against him. Colonel Lennox pressed that the Duke should fire, which was declined upon a repetition of the reason. Lord *Wilchelsea* then went up to the Duke, and expressed a hope that his royal highness could have no objection to say he considered Colonel Lennox as a man of honor and courage. His royal highness replied, that he should *say nothing*; he had come out to give Colonel Lennox satisfaction, and did not mean to fire at him. If Colonel L. was not satisfied, he might fire again! On this Colonel Lennox said he could not possibly fire again at the Duke, as his royal highness did not mean to fire at him."

It is unnecessary to add, gentlemen, that there was no attempt to prosecute or enforce the law for challenging and fighting a royal duke, by one of his own officers, or dismissing him from the army. It was fought under the influence of public sentiment, and by it held defensible; and so it would be at the present day in England.

Again, in *Wilberforce's* admirable Treatise on Practical Christianity, (a man, by the bye, not less remarkable for his talents and virtues, than for uniting in a higher degree than any other that ever lived, the characters of Statesman and Christian,) we find this subject of duelling and the causes which lead to it, in connexion with Christianity and the prevailing notions of mankind, briefly and ably touched. In speaking on the subject, he says, "It would be a waste of time to enter into any laboured argument to prove, that the light in which worldly credit and estimation are regarded by the bulk even of professing Christians, is extremely different from that in which they are placed by Scripture. The *inordinate* love of *worldly glory*, implies a passion, which from the nature of things cannot be called into exercise in the generality of mankind, because being conversant about great objects, it can but rarely find that field which is requisite for its exertions. But we every where discover the same principle, reduced to the dimensions of common life, and modified and directed to every one's sphere of action—we may discover it in a supreme love of distinction, and admiration of praise; in the excessive valuation of our worldly character; in the watchfulness with which it is guarded; in that jealousy when it is questioned; that solicitude when it is in danger; that hot resentment when it is attacked, and that bitterness of suffering when it is impaired or lost. Dishonor, disgrace and shame, present images of horror too dreadful to be faced; they are evils, which it is thought the mark of a generous spirit to consider as excluding every idea of comfort and enjoyment, and to feel as too heavy to be borne. The consequences of all this are natural and obvious, though it be not openly avowed, that we are to follow after worldly estimation, or to escape from worldly disrepute, when they can only be pursued or avoided by declining from the path of duty; yet all the effects of this speculative concession is soon done away, in FACT. Estimating *worldly credit as of the highest intrinsic excellence*, and *worldly shame* as the greatest of *all possible evils*, we shape and turn the path of duty itself, from its true direction, so as it may favor our acquisition of the *one*, and avoidance of the *other*; or when this cannot be done, we boldly and openly turn aside from it, declaring the temptation too strong to be resisted. It were easy to adduce numerous proofs of these assertions."

The writer, after giving various proofs, adds a last one, connected with the House of Commons.

"It is proved by that quick resentment, those bitter contentions, those angry retorts, those malicious triumphs, that impatience of inferiors, that wakeful sense of past defects and promptness to revenge them, which too often change the character of a deliberative assembly, into that of a stage for *prize-fighters*; violating at once the proprieties of public conduct, and the rules of social decorum.

"But from all lesser proofs, our attention is drawn to one of a still larger size and more determined character; surely the reader will anticipate the *practice of duelling*, a practice which, to the disgrace of Christian society, has been long suffered to exist with little restraint or opposition. This practice, whilst it powerfully supports, chiefly rests on that excessive over-valuation of character, which teaches us that worldly credit is to be preserved at any *rate*, and disgrace at any *rate* to be avoided. The unreasonableness of *duelling* has been often proved, and it has been often shown to be criminal, on various principles; sometimes it has been *opposed* on grounds hardly tenable, particularly when it has *been considered as an indication of malice and revenge*. But it seems hardly to have been enough noticed in what chiefly consists its *essential* guilt; a preference

of the favor of man, before the favor and approbation of God, *in articulo mortis;* in an instance wherein our own life and that of a fellow creature are at stake, and wherein we run the risk of rushing into the presence of our Maker, in the very act of offending him! It would detain us too long, to enumerate the mischievous consequences which result from this practice; they are many and great, and if regard be had merely to the temporal interests of men, and to the well being of society, they are but poorly counterbalanced by the plea *which must be admitted in its behalf by every candid observer of human nature, namely, that of a courtesy and refinement in our modern manners, unknown to ancient times.*" But there is one other observation which must not be omitted:

"In the judgment of that religion which requires purity of heart, and of that Being to whom as was before remarked, '*thought is action,*' he cannot be esteemed innocent of this crime, who lives in the habitual determination to commit it when circumstances shall call upon him to do so. This is a consideration which places *duelling* on a different footing from almost any other crime; indeed, there is perhaps NO other, which mankind habitually and deliberately resolve to practice when the temptation shall occur. It shows, too, that the practice of duelling is far more general, in the higher classes, than is commonly supposed, and that the whole sum of the guilt which the practice produces, is great beyond what perhaps has been conceived—it will be the writer's comfort, to have solemnly suggested these considerations to the consciences of those by whom this impious practice might be suppressed, if such there be, which he is strongly inclined to believe, theirs is the crime and theirs the responsibility of suffering it to continue."

The following note at a subsequent period, was appended by the author, to his previous remarks:

"The writer cannot omit this opportunity of declaring, that he should long ago have brought this subject (duelling,) to the notice of Parliament, but for a perfect conviction that he should probably thereby give encouragement to a system which he wishes to see at an end. The practice has been at different periods nearly stopped by positive laws, in various nations on the Continent, and there can be little doubt of the efficacy of what has been more than once suggested, a *Court of Honor* to take cognizance of such offences, as would naturally fall within its province; the effects of this establishment would doubtless require to be enforced by legislative provisions, directly punishing the practice; and by discouraging in the military and naval institutions, all who should directly or indirectly be guilty of it."

So also, the *Abbe St. Pierre*, a man justly celebrated for his benevolence and virtues, insists "that it is cruel and unjust, to punish with loss of life, an unhappy man who cannot obey the law (that is, cannot refuse a challenge) without infamy and disgrace, as the law of nature on the other hand enjoins, never to dishonor himself, but always to prefer death to infamy."

The Abbe therefore proposes that a tribunal should be established, before which all differences between men of honor should be decided.

He also proposed that a solemn oath should be administered to every officer on receiving his commission, that he should abjure duelling. The remedy which to a great extent has proved beneficial under the provisions of our statute on the subject, which have been repeatedly amended and extended. [Mr. Stevenson here referred to the several amendments of the anti-duelling law, making the *oath* to be taken by all persons appointed to office, much more comprehensive, and extending the provisions of the act to the seconds, the bearers of the challenge, or acceptance, and to all those who aid or assist in the duel.]

I assume, then, gentlemen, as settled, that all means to suppress duelling, even in Great Britain, have failed! notwithstanding their untiring efforts—notwithstanding their denunciations against duelling, and their rigorous efforts to enforce the law. The public feeling and sentiment do not go along with the denunciations against the practice. The *letter of the law*, is made to yield to the *spirit of the times!* And this too, in a country where one killed in a duel is declared to be a capital offence in all who take any part, whether as *parties* or *seconds;* and this without regard to what are termed the rules of honor, and of which *the law, it is said, affects to know nothing of;* so that every duel, whether fair or not, where life is taken, is declared to be murder. And yet, gentlemen, we see that the law is a dead letter; for what with the unwillingness of prosecutors, the connivance of judges, the feelings of juries, and the corresponding feelings of the people, no instance or very few is in print of the law being executed upon any person for being engaged in a duel, fought in what is called a fair and honorable manner. Let me refer you, gentlemen, to a case in point, decided in Ireland as late as 1807, and reported in the 6th volume of Celebrated Trials in Criminal Jurisprudence. Major Alexander Campbell was indicted for the murder of Captain Alex. Boyd, (both belonging to the same regiment,) in a duel fought in the year 1807. The proof was clear of the duel, and that it was *an unfair and foul one.* In charging the jury, the learned Judge used the following language: "There is another point, gentlemen, for your serious consideration. It has been correctly stated to you by the counsel, that there is such a thing which is called the point of honor, a principle, however, totally false in itself, and unrecognized. both by law and morality, but which, from its practical importance, and the mischief attending any disregard of it to the individual concerned, and particularly to a military individual, has *usually been taken into consideration by juries, and admitted as a kind of extenuation.* But in all such cases, gentlemen

of the jury, there have been, and there must be, certain grounds for such indulgent consideration—such departure from the letter and spirit of the law. In the first place, the provocation ought to be great; in the second place, there must be a perfect fair dealing—the contract to oppose life to life must be perfect on both sides; the consent of both must be full, neither of the parties must be forced into the field; and third, there must be something of necessity to give and take the meeting; the consequence of refusing it being the loss of reputation, and there being no means of honorable reconciliation left. Let me not be mistaken on this serious point. I am not justifying duelling! I am only stating these circumstances of extenuation, which are the only grounds that can justify a jury in dispensing with the letter of the law. You are to consider, therefore, gentlemen, whether in this case, there were these circumstances of extenuation. You must recall to your minds the words of the deceased—Captain Boyd—'*You have hurried me*,' '*I wanted to wait and have friends.*' '*Campbell, you are a bad man.*' These words are very important, and if you deemed them proved, they certainly do away all extenuation. If clearly proved, the prisoner is guilty of murder. The deceased will then have been hurried into the field; the contract of opposing life to life could not have been perfect. It is important also that you should revert to the provocation, and to the evidence which stated that the words were offensively spoken, so as not to be passed over, but that the affair would not have happened if there had been a candid explanation. You will decide these points, gentlemen, and make your verdict accordingly."

The Jury found him guilty, but recommended him to mercy. But the duel was one so *unnecessary* and so *foul*, that he was not pardoned, but suffered the penalty of the law.

I use this authority, gentlemen, to show that even in Great Britain, courts and juries are compelled to look to the peculiar character of duelling and to respect public sentiment. The Judge here so instructed and charged the Jury. And need I tell you, gentlemen, that duelling still prevails in England, and that to as great an extent as ever! Need I read to you from the books that lie before me, the numerous instances of duels which have taken place within the last half century from royal dukes, ministers of state, members of parliament, and military and naval officers, down to the humblest individuals. Let me refer you to another case.—In the trial of Captain Macnamara at the old Bailey in April, 1803, for shooting Colonel Montgomery in a duel, the Judge charged the Jury against the accused. Among other things he said, "that the fact of killing had been admitted. That the law recognized none of the nice distinctions of honor, by which duelling was attempted to be justified. There could be no doubt as to what ought to be the verdict of the Jury. However high the character of the accused, it ought not to influence the Jury.—There was no alternative as to the verdict they were bound to render." The result was a prompt verdict of acquittal, in the teeth of the Judge's charge. A circumstance of some interest in this trial, was the evidence of *Admiral Nelson*. When sworn, he gave the accused a high character. Said that he had not only the highest esteem and respect for him, as an officer, but had looked on him *as a gentleman, and one who would not take an affront from any man living;* and of course if insulted, would be bound to fight, I presume, in the *Admiral's opinion*.

[Mr. Stevenson then referred to numerous other cases of duels in England, and particularly to those between Mr. Fox and Mr. Adam, Mr. Pitt and Tierney, Grattan and Curran, Sir Francis Burdett and Mr. Paul, Captain Cadogan and Lord Paget, Earl Fitzwilliam and Beresford, Lord Lonsdale and Captain Cuthbert, Lord Lauderdale and the Duke of Richmond, the Duke of Norfolk and Lord Malden, the Dukes of Buckingham and Bedford, Lord Castlereagh and Mr. Canning, and the Duke of Wellington and Lord Wilchelsea. There were full accounts of these duels, Mr. Stevenson said, in the books now before him, but he had not time to do more than barely to refer to them. In not one of them, had their been any prosecution he believed.]

Now, gentlemen of the Jury, does any one believe that *Duelling* can be suppressed, or capitally punished, when the first men in the kingdom, such men as Pitt and Fox, and Castlereagh, and Canning, and Grattan and Nelson, and Wellington, lend the high sanction of their names, and feel themselves justified and compelled to peril their lives upon a point of honor! And I would ask my friend, the commonwealth's attorney, if such men as these constitute the swordsmen of England, and alone worthy of the times of Tamerlane and Bajazet? A man like the Duke of Wellington, to be capitally punished for fighting a duel! And if he could not be so punished, what honorable man ought to be?

And when we turn our eyes to our own country what do we behold? The practice of duelling confined to the swordsmen and professed duellists of America? Oh, no! Far otherwise, I deeply regret to say. It still pervades all departments of society, and especially our public rulers and politicians, and those who make the laws, and who should, I admit, set better examples. Will you pardon me, gentlemen, while I refer to one or two of the more distinguished cases, and which are, no doubt, familiar to you all.

Was Andrew Jackson regarded as a swordsman and duellist, because he fought, not one, but three duels, and once shed the blood of a fellow man in single combat? Was he, in doing so, deemed unworthy to preside over the destinies of his country? He was twice elected to the first office in the world, by his countrymen, and died a Christian!

Was Henry Clay, another of "these swords-

men," deemed unworthy of high public trust, because he had felt himself justified, whilst Secretary of State, in challenging to mortal combat one of your own distinguished Senators, for words spoken in debate, and for which the Constitution declares—"no man should be held to answer for elsewhere?" How many, think you, of his numerous friends in Virginia, or elsewhere, and especially the religious portion of them, (including ministers of the Gospel,) refused to vote for him, *as President of the United States*, because he had fought, not *one* but *two duels?* I should like to ask my friend, the Attorney for the Commonwealth, whether he voted for Mr. Clay? But lastly, gentlemen, what shall I say, in what terms shall I speak, of that fatal combat, which deprived America of one of its early and devoted patriots; one of its most distinguished and illustrious sons! That man, who in peace and war had been the friend and companion of the father of his country—I allude, of course, to *Alexander Hamilton*. Let me read to you, gentlemen, from the British Annual Register the interesting and affecting account of this bloody tragedy. "The American papers have brought accounts of a melancholy affair of honor between the Honorable Aaron Burr, Vice President of the United States, and General Alexander Hamilton. The origin of the dispute was from a pamphlet published by Dr. Cooper, in which was the following passage: 'General Hamilton and Dr. Kent say that they consider Colonel Burr as a dangerous man, and one unfit to be trusted with the reigns of government.'

"In another place, Dr. Cooper says,—'General Hamilton has expressed of Mr. Burr opinions still more despicable.' This latter passage, excited the resentment of Colonel Burr, who sent his friend with a letter to Gen. H., in which he demands a prompt and unqualified acknowledgment or denial of the expression, which could justify this inference on the part of Dr. Cooper. General Hamilton in his answer admits the first statement, the language of which he contends, comes fairly within the bounds prescribed in cases of political controversy. He objects to Colonel Burr's demand, by considering it as too indefinite, or as calling on him to retrace every conversation which he had held, either publicly or confidentially, in the course of 15 years' opposition, and to contradict that which, very possibly, might have escaped his memory. If anything more definite should be proposed, he expresses his willingness to give Colonel Burr all due satisfaction. Colonel B., in his reply, insisted on a general retraction, and said it was no matter to him whether his honor had been attacked loudly or in whispers. General Hamilton rejoins by calling for something more defined, and refuses either a general denial or a general acknowledgment. A meeting was then demanded by Colonel Burr. Previous to the repairing to the ground, the General drew up his will, and enclosed with it a paper containing his reflections on the proposed meeting. In it he says,—'On my expected interview with Colonel Burr, I think proper to make some remarks explanatory of my conduct, motives and views. I was certainly desirous of avoiding this interview, for the most cogent reasons.—First, my religion, and moral principles are strongly opposed to the practice of duelling, and it would ever give me pain to be obliged to shed the blood of a fellow creature in a private combat, forbidden by the laws. Second, my wife and children are dear to me, and my life is of the utmost importance to them in various ways. Third, I feel a sense of obligation to my creditors, who, in case of accident to me, by the forced sale of my property, may be in some degree, sufferers. I did not think myself at liberty as a man of probity, lightly to expose myself to this hazard. Fourth, I am conscious of no ill will to Colonel Burr, distinct from political opposition, which has, I trust, proceeded from pure and upright motives. Lastly, I shall hazard much, and can possibly gain nothing by the issue of the interview.' It also appears that General H. had determined not to return Colonel B's. first fire; but on his receiving the shock of a mortal wound, his pistol went off involuntarily, and without being aimed at Col. B. This statement having been denied, search was made for the ball, which was found lodged in a cedar tree, at the height of eleven feet and a half, fourteen paces from the place where General H. stood, and more than four feet out of the line of direction between the parties. When General Hamilton fell, Colonel Burr walked towards him with apparent gestures of regret, but did not speak to him, as he was hurried from the ground by his friends. The funeral of the General was observed in New-York with unusual respect and ceremony. All the public functionaries attended. All the bells in the city were muffled, and tolled throughout the day. The shops, at the instance of the Common Council, were shut; all business was suspended, and the principal inhabitants engaged to wear mourning for six weeks. After the funeral service, Governor Morris, on a stage erected in the portico of Trinity Church, (having four of General Hamilton's sons, the eldest about sixteen and the youngest about six years of age, with him,) delivered to an immense concourse in front, an eloquent extemporary funeral oration, expressive of the merits of the deceased, and of the loss which America had sustained in his death. No death, since that of the great and good Washington, (say some of the papers,) has filled the republic with such deep and universal regret. The Coroner's inquest held on the body of General Hamilton, brought in a verdict of wilful murder against Aron Burr, Vice President of the United States, and the two seconds as accessories."

No prosecution, it is believed, ever took place. Colonel Burr afterwards took his seat in the Senate of the United States, as Vice President; his second afterwards became a Judge of the United States; and the friend of General Hamilton, a most amiable and accom-

plished man, I served with in Congress, some years ago.

Yes, gentlemen of the jury, upon the very spot which, only a few years before, had drank the blood of the eldest son, did this great man pour out his life in vindication of his honor, and in obedience to what he regarded as *public sentiment*.

To what reflections does it lead? Your minds will anticipate them, I am sure! Here was a man in the prime of life, (47 only) with a wife and eight or ten children depending on him for support; a man of great talents and exalted character; a man opposed both on moral and religious principles to the practice of duelling; a man having no malice whatever against the challenger, and whom he believed he had never injured; yielding up his life a willing and bloody sacrifice, to public sentiment and a point of honor, at most, of a doubtful and equivocal character. When such men, gentlemen, feel themselves justified in periling their lives, and shedding the blood of their fellow men, in what the world regards as honorable combat, what are we to think of that law and public sentiment, which would doom a gallant and honorable youth, like my unfortunate young friend at your bar, to an infamous and ignominious death, for having vindicated his own life and reputation, in a fair personal combat, such as that which you are called on this day to decide? Gentlemen, I feel and know what your answer must and will be! I shall hear your response in that prompt and speedy verdict of acquittal, which I trust you are now ready and prepared to render.

I say then, that if the evil of duelling is to be cured, we must begin at the right end!—we must rely on changing public sentiment and public opinion, and not on judges and juries. If society do not remedy the evil, penal laws cannot. Laws must re-act on public opinion, or *public opinion* will defeat the law. Whatever the moral and legal turpitude of duelling may be, it is in vain to expect to suppress it by *laws* declaring it murder, whilst *manners* and *public sentiment legitimate it*.

Gentlemen, I have troubled you long, I fear too long. I have exhausted your patience, and my own strength, though I have yet much to say. I must, however, give way to my distinguished friends who are to follow me, and who will doubtless supply any omissions which I have made, and place this cause on its true basis. I will then briefly recapitulate and conclude. I have attempted to prove, in the 1st place; that there was no agreement to fight a duel, nor was there one fought; but that it was an ordinary personal combat, and therefore a justifiable killing, in *self-defence*. 2nd. That if you shall believe it was a duel, it was yet not one within the letter or spirit of the law, inasmuch as there was a total absence of all malice, either express or implied, on the part of the accused; and 3rdly and lastly, That if it was clearly a duel, within the law, it was yet a fair and honorable one, and *under the peculiar circumstances of the case*, cannot, and ought not to be enforced against the accused. If I have succeeded in establishing either of these propositions, or you entertain any reasonable doubt as to any one of them, you are bound to acquit.

I call on you then, gentlemen, by every motive which can bind you to a discharge of your duty, to do justice to my unfortunate young friend. Bind up the wounds of his broken-hearted parents; carry joy, and peace, and consolation, to the bosoms of his numerous family and friends; wash out the stain which has been attempted upon his character and reputation, and restore him to his country, as in truth he is, pure and unspotted.

Gentlemen, I have done. All that is dear to the accused, is in your hands. I trust in God, it will find protection in your justice and humanity, and that the verdict which you will this day render, may be such as you may ever look back upon, without the stings of conscience, and one day meet, without the fear of retribution.

Samuel Taylor, Esq., then addressed the Jury, at length, in behalf of Mr. Ritchie.*

* The report of Mr. Taylor's speech had not been received back from him, up to the time when this work was necessarily put to press. It is to be regretted that an argument characterized by so much force and ability, does not appear.

JOHN W. JONES, Esq., then addressed the Jury, as follows:

Worn down, gentlemen, as I am sensible you must be, and as I feel that I am, by the very laborious investigation through which we have all had to pass, in the examination of this deeply interesting cause, I cannot but lament the necessity which renders it proper that I should longer tax your time with any further discussion either of the law or the testimony upon which it depends. For, after the very full, clear, and, to my mind, perfectly conclusive views of the subject, which have been presented to you by my friends who have preceded me, and with whom I have been associated in the defence of the accused, it must be apparent that I can add but little to the force of those views, which can scarcely have failed to produce conviction on the minds of all who have heard them, that the accused is guiltless of crime. I am, however, consoled by the reflection, that if in a case so vitally important to him, it shall be in my power, by any effort of mine, to shed upon it but a single additional ray of light, my labors will not have been in vain.

The indictment upon which he has been arraigned, and to which he has pleaded not guilty, charges him with the high crime of murder; and the accused has been subjected to the mortification of seeing circulated through the most public channels, statements which grossly misrepresent his conduct and motives, distort the facts, and hold him up to the world as the veriest miscreant on earth; while he, as one of the conductors of a leading public journal, and others who stand connected with him by the most endearing ties, from a sense of what was due to himself, to the society of which he was a member, and to the laws of his country, have forborne to present any expose of the transaction, asking only that his cause might not be prejudiced, but that public sentiment might remain suspended, until an opportunity could be afforded, of presenting fairly and fully to the world, the law and the facts of his case. This done, the humbler hope was confidently indulged, that although for a time he might suffer in public estimation, he was destined very speedily to be restored, not only to his liberty, but to that high station which through life he had always occupied. That opportunity, gentlemen, has been this day afforded; and to him you can well imagine that it is a day of anxiety and solicitude;—to his counsel and to all who stand in any manner connected with him, it is a day of deep interest. But I will say that to us all, it is a day of confidence in the justice of his cause—one to which, he has anxiously looked forward with mingled emotions of pleasure and delight, if indeed such emotions can be presumed to have entered into the heart of a man, whose narrow tenement is within the four walls of a prison, where, shut from heaven's light, he has voluntarily surrendered himself to be dealt with as the laws of his country may require; and upon you devolves the high duty of administering the law according to the testimony which you have so patiently and attentively heard. You are the judges of both. And when on yesterday the counsel for the accused offered to submit his case to the jury without one word of argument, it was from a conviction on their part, then and now entertained, that their confidence in its justice and its truth, would meet a ready response, not only in the bosom of every juror empannelled to try his cause, but of every unprejudiced man who had taken the trouble to understand the law and the testimony in relation to it. Had this not been so—had I for one moment entertained a doubt upon the subject—I should have held myself recreant to the high trust confided to me as counsel, if I had not employed every energy of my mind to have cleared away everything like doubt that might have hung over it. You then, gentlemen, can readily imagine our surprise, when the proposition (doubtless from a sense of duty on the part of the prosecuting attorney) was not only rejected, but its rejection accompanied by the taunting remark, "the least said, the soonest mended;" and but for this remark, I should not have deemed it necessary to have noticed the rejection of the proposition at all; but having been made, if may not be amiss to remind the attorney for the commonwealth that we have both been long enough at the bar to know, that while argument is often very necessary and proper, not only to elicit truth, but to a correct understanding of many subjects, still that there is a class of cases (I mean such as are plain, free of difficulty, and easily comprehended,) that do not require either argument or the aid of counsel to enable men of ordinary intelligence to comprehend them; such cases may be always safely submitted to an intelligent jury. But where it is expected by argument to "make the worse appear the better cause," it may not be prudent to submit cases even of that description.

Gentlemen, the counsel for the commonwealth has now been heard, and you have all the light that an argument in support of the prosecution can shed upon the subject; able, I admit, but not convincing—an argument that seeks to establish the guilt of the accused by a plausible defence of the conduct of the deceased. This, I know, is not avowed, but denied by the counsel who urged it; but still it would be difficult for any one who had given it his close attention, to escape the conclusion; and here allow me to say, that there is nothing further from my wish or intention, than improperly to reflect on the memory of Mr. Pleasants; I desire not to disturb the ashes of the dead, or to cast any reflection on the well-earned reputation which he secured to himself while living. But this I must be allowed to say—that if his course can be defended, how triumphant must be the defence of the accused, when we come to contrast their

conduct throughout this whole affair. This it will become my duty to do.

The indictment in this case, contains two counts; in the first, the accused is charged with murder at common law; and in the second, with murder under our statute for the suppression of Duelling. I understand the attorney for the commonwealth as abandoning the prosecution as a common law offence, and to rest it alone on the statute. Upon that statute, he informs you, "the prosecution must stand or fall."

Prepared, as we are, to meet the charge in any and every aspect, as he has elected to place it there, I shall in the discussion confine my remarks principally to the consideration of the question, as a statutory offence.

This statute presents an anomaly in the history of judicial proceedings. We have a law, passed by the Legislature of Virginia, in the year 1810, for the suppression of duelling; and during a period of 36 years which has since elapsed, there never has been a conviction under it: not only has there been no conviction, but I have no recollection of more than one case in which a prosecution has been instituted; and that, as I am now informed, at the instance of the survivor himself.—That was a case which occurred in an adjoining county, (Powhattan.) The duel was fought on a Court day, so near the Court House, that the report of the pistols were heard by the Judge upon the bench; one of the parties was killed, and the other immediately returned to the Court House, voluntarily surrendered himself, and upon an investigation of the facts, was acquitted by an Examining Court. He was never indicted. The question naturally arises, why is this? Certainly not because the practice of duelling has been suppressed; for it has already been shown in the course of this discussion, that many duels have been fought in Virginia since the passage of the act of 1810. But I apprehend it is for the reason that the law has accomplished the object intended by the Legislature; not that it has suppressed the practice entirely, but that its effect has been, to limit it to that class of cases where one or perhaps both of the parties must either submit to disgrace, or peril their lives in defence of their honor. You may take any plain, honest, respectable man, whether he be high or low, rich or poor, talented or ignorant, and present to him the alternative of submitting on the one hand to dishonor and disgrace, or to peril his life on the other, and he will never hesitate; but will tell you, that life to him is valueless when robbed of his reputation; and hence it is, that since the year 1810, in very nearly all the cases which have occurred, the circumstances attending them have been such, that public sentiment would not permit a prosecution to be instituted; and when the attorney for the commonwealth tells me that every man by whose hand another falls in a duel, is a murderer, and refers me to Hall and to Hawkins and Foster, to prove that such is the common law of England, I refer him to the common law of Virginia, so far as unbroken custom and usage for 36 years can constitute common law, and ask him to point me to one case in which there ever has been a conviction, or any man made to stand where now the prisoner stands.

I might go farther, and point him to the numerous cases which have occurred in other states of this Union, where the same common law principles prevail, with like results in practice, and enquire of him if those by whose hands others have fallen in duels there, have been regarded as murderers? Let the long list of illustrious names of men thus situated, who have not only adorned the social circle, but the councils of their country, answer the question. These men, the gentleman, I suppose, would think fit subjects for the gallows! I need scarce say to you that that has not been the opinion entertained in Virginia, or any where else in the United States.

Let it not be supposed, gentlemen, that I am inculcating principles which tend to insubordination, or to disturb the peace of society; on the contrary, they are the only principles that can preserve both. Men of integrity, of worth, and eminent virtues, must always feel that to submit to degradation and dishonor, is impossible; take from such the means of preserving unsullied their reputations, and place them at the mercy of those whose passions, or interest, or malignity may invite to assail them with comparative impunity, and you inflict upon society a wound that is deep, and broad, and durable. There is no one who respects more highly than I do, the laws of my country; but there is a point beyond which "forbearance ceases to be a virtue," and whenever that point is reached, there are but few men who would not risk the consequences, as the prisoner has done in this case. You, gentlemen, would risk them.

I propose now to examine the provisions of the statute, with a view to ascertain whether the facts and circumstances attending this transaction are such as to make it a duel within the meaning of the law. It is a statutory offence, and the law creating it as highly penal as it is possible to make it. The penalty for its violation is death. What is the rule of construction in interpreting a statute so highly penal? I do not know that it is any where more clearly stated, than by the late President of the Court of Appeals, in Tucker's Commentaries, vol. 1st, page 16. "Penal laws must be construed strictly; nothing therein must be taken by implication or intendment. 1 Mun. 436. It is an uncontroverted principle of law, that, in all prosecutions on penal statutes, the strict letter must be pursued, and nothing admitted by inference or implication. 3 Mun. 507." "The rule," says Chief Justice Marshall, "that penal laws should be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals,

and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department. It is the legislature, not the court, which is to define the crime and ordain its punishment. It would be dangerous, indeed, to carry the principle, "that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity or kindred character with those which are enumerated." See 5 Wheat. 95, 96. Accordingly, it is said, that a doubt relative to the construction of a statute, or respecting the intent of the legislature, ought to be as effectual in favor of a prisoner, as the most thorough conviction: per Johnson J. 3 Wheaton, 637.

Then, to convict the accused, his case must be brought not only within the spirit and meaning of the law, but within its strict letter. Keeping the rule here laid down in view, let us proceed with the examination, and see whether the case falls within the provisions of the statute: if the statute does not make it a duel, I undertake to say that it has no one feature of an ordinary duel. Ordinarily, there is an offence given, or supposed to be given, then a demand for satisfaction, next an explanation; or, the explanation is declined; if declined, it is followed by a challenge; the challenge is either accepted or rejected; if accepted, the challenged party fixes the time and place of meeting, prescribes the terms, and selects the weapons; and there are duties which devolve both on the principles and seconds. In this case there was no demand for satisfaction; it is however proved that a verbal message from Mr. Pleasants was on the evening of the 24th of February delivered by Mr. Archer to Mr. Ritchie; but was there anything in that message like a demand for satisfaction? Does Mr. Pleasants complain that Mr. Ritchie had injured him, or does he call on Ritchie to meet him in mortal combat? No, the message is, that he (Pleasants) would be on the Manchester side of James River, two hundred yards above the cotton factory, the next morning at sunrise, with side arms, without rifle, shot-gun, or musket, and accompanied by two friends—for what purpose he does not state, nor does he inform any one. Mr. Greenhow, the friend of Ritchie, enquired of Mr. Archer, the bearer of this verbal message, to know what was intended; Archer is unable to inform him; all is doubt and uncertainty with Ritchie and his friends: so great the doubt in the mind of Greenhow, that he farther inquires of Archer, "Is it expected that there is to be a general *melée*?" Archer does not know what was intended. If a duel, and so intended by Pleasants, surely those rules that ordinarily apply in the settlement of affairs of honor would not have been wholly disregarded, but scrupulously observed by him: in which event the challenged party would have had important rights, which have been entirely overlooked and denied to him. He would have had the right to fix the time and place of meeting, to select the weapons, and name the distance, but in this case all was determined upon by his adversary, to whose bosom alone, every thing was confined down to the moment of attack. Is there any man who has ever heard of such a duel as this? Do the law books furnish such a case? Or is there such a case to be found in the history of any civilized country on earth? It certainly has no feature of an ordinary duel—not one. But still it is contended that it was a duel, and such as it was the object of the law to punish. I have shown, upon authority, that it is not enough that the offence charged, is one which the law intends to punish; but that the offence proved, must be an offence, which the law strictly and literally interpreted, does punish. The section reads as follows: 1st Revised Code, page 583. "Be it enacted "by the General Assembly, That any person "who shall hereafter wilfully and maliciously, "or by previous agreement, fight a duel or sin- "gle combat, with any engine, instrument or "weapon, the probable consequence of which "might be the death of either party, and, in so "doing, shall kill his antagonist, or any other "person or persons, or inflict such wounds as "the person injured shall die thereof within three "months thereafter, such offender, his aiders, "abettors, and counsellors, being thereof duly "convicted, shall be guilty of murder, and suf- "fer death, by being hanged by the neck; any "law, custom, or usage of this commonwealth "to the contrary notwithstanding." To make the act charged in the indictment an offence punishable by this statute, there must be proof either that the duel or single combat referred to, was fought *wilfully and maliciously*, and with an *engine, instrument*, or *weapon*, the probable consequence of which might be the death of either party, or else there must be proof that there was a *previous agreement* between the parties *to fight such duel* or *single combat* with such *engine, instrument* or *weapon*, then was the offence charged committed wilfully and *maliciously*—an act is done wilfully, when it done on purpose, as contradistinguished from those which occcur accidentally; and it is clear that an act may be wilfully committed, and yet not committed maliciously. If on a sudden provocation—two men fight on the court yard, with knives, dirks, or pistols, and one kills the other, it would not be murder; for although wilfully done in the heat of blood, there would be no malice, neither would it be a duel or single combat within the meaning of the statute, because there was no previous agreement to fight. To make the act charged an offence punishable by this statute, there must be proof that it was done *both wilfully and maliciously*. Malice must be proved, and is either express or implied by law. "Express malice is where one with sedate, deliberate mind, and formed design, doth kill another, which formed design is evidenced by external circumstances, discovering that inward intention, as lying in wait, antecedent menaces, for-

mer grudges, and concerted schemes to do him some bodily harm;" (4th Blackstone, page 198, 199), or malice may be implied either from the deliberation with which an act is committed, or from its violent, unprovoked, wanton and cruel character. But it must appear either that there was a fixed deliberate purpose to do the act; in this case to take away life; or that the killing was unprovoked, wanton and cruel in its character. That there was no such feeling ever indulged by the accused, but on the contrary that there was on the part of Mr. Pleasants, a purpose deliberately formed and often avowed, either to fix upon him lasting disgrace, or else to take his life and risk his own in the attempt, I now propose to make apparent from the testimony in the cause.

If there be in this case, evidence of malice, I call for the witnesses by whom the testimony has been given—who are they? Gentlemen, I may call for them, but it is like calling spirits from the tomb, they won't come. Has he throughout this whole controversy been heard to utter a threat, known to perform a deed, or permit one word to escape his lips, calculated, to excite the feelings of any living man? No threat, no such deed, no such expression has been proved, as having been uttered by the accused.

Mr. Flournoy.—When Mr. Deane asked Mr. Greenhow to withdraw the epithet of coward, Mr. Greenhow said that Mr. Ritchie conscientiously believed Mr. Pleasants to be a coward.

Mr. Jones.—That expression of Mr. Greenhow had, at the moment, escaped my recollection; but admit it, and then I inquire of the gentleman whether he means to contend that malice can legally and fairly be inferred from such an expression? If that be so, it would, I apprehend, be difficult to imagine any case of quarrel or dispute, where offensive and insulting language had been used by the parties, that it would not be in the power of the prosecuting attorney to show that the parties, one or both, acted on malice, for if the term coward should not be applied, epithets equally offensive would probably be employed. Not only is there no evidence of malice, but such an inference is repelled by a course of prudence and forbearance on the part of the accused, scarcely to have been expected from one of his years, in view of the consequences likely to result from it.

But it is contended that malice is to be inferred from the fact that the accused did on the morning of the 25th February, go armed to the place indicated by the deceased in his most extraordinary verbal message of the 24th. Properly to appreciate the motives that influenced his conduct on that occasion, it will be necessary briefly to pass in review before your recollection, the conduct of the parties during the four days next preceding the meeting on the 25th, to which period this investigation has been limited.

On Saturday morning the 21st of February, it was generally understood and expected by the citizens of Richmond, that an attack would be made by Mr. Pleasants on Mr. Ritchie, as has been proved by Mr. Maule and Col. Meredith. Mr. Maule states that on Saturday morning about nine o'clock, his attention was directed to Mr. Pleasants, who, at that time, occupied a position at the corner of the street opposite the building in which the Richmond Enquirer was issued, (Mr. Ritchie being one of the Editors of that paper,) about eighty feet from the door of the office, and from which he could see plainly, all who passed in or out; that he had a hickory stick in his hand, and appeared much excited. In the evening of the same day, he was seen by Col. Meredith, whose office was near, to pass along the pavement immediately in front of the door of the Enquirer office, in company with Mr. Charles Maurice Smith, his partner, and, after remaining a short time, saw him return, again passing very near the door of the office; that on passing the door, Mr. Pleasants walked slowly, and looked in; that this was repeated by Mr. Pleasants twice afterwards during the evening; that Pleasants had a stick, and it was generally supposed that he would attack Ritchie. Mr. August also saw him on the same evening, in company with Mr. Smith, standing for a considerable time, near the office, on the opposite side of the street. He was also seen on the same day by Mr. Vial, to pass the door of the Enquirer office twice, halting each time at the door and looking in. If this were all the testimony in relation to what occurred on Saturday, I apprehend that no rational doubt would be entertained but that he was in search of Ritchie, and intended to attack him. But we are not left to conjecture for anything, as to the motives that influenced his conduct on that day; for on Saturday night, Mr. Vial further states that Mr. Pleasants called at his house, and in a conversation which he held with him, admitted that his object in walking the street on that day, was to attack him, and further stated that "Ritchie should kill him, or he would kill Ritchie." Nor was the accused unapprised of what was intended; he was informed both by Mr. Maule and Mr. Green: but determined as he was, neither to seek Mr. Pleasants, or dishonorably, to avoid him, the information received from these gentlemen did not change at all his own determination, or cause him for a moment to depart from the line of conduct which he had marked out, as proper to be pursued by him. He uttered no threat, performed no imprudent act, nor did he allow a rash or intemperate expression to escape his lips. But lest it may be supposed that there were hasty, unmeaning remarks not designed to be carried into execution, I will refer you to the testimony of Dr. Warner, the intimate friend of Mr. Pleasants, whose society he sought, and whose professional aid he afterwards procured. In conversation with Doctor Warner, on the next night, (Sunday night,) Pleasants stated to him, that the Ritchies had placed him in a very awkward position, and that he would have the blood of the accused, or he

should have his, and again; on the night of the 24th, when asked by Dr. Warner, if his object in going the next morning to Manchester, was to risk his life, he replied that he did intend to risk his life, and take the life of the accused, if he could.

On the night of the 22nd, Mr. Pleasants had not succeeded in meeting with the accused, and consequently no attempt had been made by him to carry into execution the threats which had then been twice repeated; but there was a day approaching when it would be in his power to meet the accused face to face. Monday, the 23d of February, had been set apart for the celebration of the 22d, the birth-day of the father of his country, a day sacred to memory and to feeling; a day on which it might reasonably have been supposed that all the angry passions of the human heart would have been calmed. Mr. Ritchie was an officer in an Artillery company, which was required to take part in the celebration. When the military companies had formed on the public square, and the people of the city assembled there, Mr. Wickham proves that he was standing near the line of the Artillery company, and but a few feet distant from Mr. Ritchie, when he saw Mr. Pleasants walking with a quick step, his face pale, and he greatly agitated. From what he knew, he expected a rencontre. He spoke to Pleasants and said to him, you intend to make an attack on Ritchie, to which he replied,—"No—public opinion will not sustain it." Witness said there could be but one excuse for it, and that was that Ritchie was armed, he has his sword by his side. Pleasants then stated that such had been the course of his own thoughts, and afterwards said to witness,—"damn the fellow, I can't find him." On being informed by Mr. Wickham, that Ritchie could be as easily found as any other man, if sought in a proper manner, Pleasants manifested great displeasure, gnashed his teeth, and appeared convulsed with rage; his appearance and manner being that of one intending to make an attack. No attack, however, was attempted, and doubtless for the reason which he had just assigned, that public sentiment, of which he had afforded an opportunity of judging, would not sustain him. Early the next morning, the 24th of February, Mr. Wickham was again on the street, where he saw the people assembled in groups, and heard nothing talked of but the expected meeting of Pleasants and Ritchie on the street. On that morning, he saw Pleasants as often as three times approach very near the door of the Enquirer office. At length, Pleasants spoke to him saying—"it is in bad taste;" to which Mr. Wickham replied it might answer in Vicksburg, but would not in Richmond. And although he had said to Dr. Warner, that on Saturday his object in seeking the accused was merely to strike him in the face with his glove, no one, I apprehend, can look upon what afterwards transpired, without being satisfied that he was prepared to repel resistance in any form in which it could have been offered, even to the taking the life of the man whom he thus sought to humble and degrade. Why strike with his glove but to inflict disgrace? for it is not the severity of the blow, or the dangerous character of the instrument or weapon with which it is inflicted, that aggravates insult, but the reverse. To spit in a man's face, would be an insult as highly offensive and humiliating as any that could well be offered; and so far has the principle been sometimes carried in other countries, that when the foot was applied, it has been supposed that the thinner the sole of the shoe, the more aggravating the insult and lasting the disgrace: and so with the use intended to be made of the glove.

Mr. Pleasants, still defeated in what very clearly appears to have been his object, by a course of prudence and forbearance on the part of the accused, which has scarcely a parallel, as well as from his unwillingness to shed human blood, on the evening of the 24th, caused to be delivered to the accused, the verbal message to which I have already had occasion to allude, and to which, on the same night, the following reply was returned:—

RICHMOND, February 24, 1846.

Dear Sir:—The message delivered to me by you this morning, from J. H. Pleasants, was nearly in these words: "I am requested by Mr. Pleasants to inform you that he will be on the Chesterfield side of James river to-morrow morning at sun-rise, armed with side-arms, without rifle, shot gun, or musket, and accompanied by two friends similarly armed."

This disguised challenge I protest against—first, because it is not in the form which is justified by men of honor, and, to a great extent, upheld by public opinion.

Second, Because it prevents that certainty of equal advantage recognized by all gentlemen as an essential of the duel or fair and chivalrous combat.

Third, Because it gives to the challenging party the privilege of selecting time, place and weapons—a right which, according to all usage, belongs to the challenged.

Fourth, Because both the time and place are so selected as to occasion great inconvenience and danger to all parties concerned, from a legal prosecution.

Fifth, Because the terms proposed are savage, sanguinary, and revolting to the taste and judgment, not only of all honorable men, but of every man in the community, and calculated to cast odium on any one who may be governed by them.

I am ready to receive a proper challenge from Mr. Pleasants, but for the reasons above given, I solemnly protest against the terms he has proposed. On his head, then, must rest all the blame and reproach which should be incurred from acting in defiance of these considerations.

Notwithstanding these objections, I shall be on the ground mentioned at sunrise.

Do not consider me as casting upon yourself the slightest reflection. I do not consider you in any way responsible for the message delivered this morning.

I am your obedient servant,
THOMAS RITCHIE, JR.

[Directed to Jefferson Archer, Esq.]

This letter was handed me by Mr. Washington Greenhow, about 9 o'clock in the night of the 24th February last, and was very shortly after, during the same night, shown by me to Mr. John H. Pleasants. P. J. ARCHER.

March 28th 1846.

Gentlemen, what other alternative was there, short of unconditional submission to contempt and disgrace, left the accused? For three days, he knew that Pleasants had been upon the street in pursuit of him; he does not go out of his way to meet him: that he had repeatedly been to the door of his office, under circumstances which left no doubt as to the object of his visits, and he forbears to take any step, or to do any act, calculated to bring about a collision: friends could not restrain him, nor had the opportunity which had been afforded him for thought and reflection, tended in the slightest degree, to calm those angry feelings, which for days had been so often, and so publicly manifest, or to change a rash determination, which has unfortunately cost him his life. Can a situation more annoying and harrassing, or one more painful, be imagined? His peril he was obliged to see; and to know, that banishment from the society of which he was a member, covered, as he would have been, with disgrace and shame, (had he failed to meet it,) inevitable. Thus situated, what was he to do? Was it expected of him to hire a guard to keep Mr. Pleasants off; or to lock himself up, and seek security behind bolts and bars? Has it come to this, that a man in attending to his own necessary business affairs, cannot be allowed to walk the public street, or place his foot beyond his own threshhold, without incurring the risk of an attack with deadly weapons? and under circumstances where some innocent and unoffending man, or woman, or child, would be almost as likely to become the victim of his rashness and violence, as he against whom his hand should be raised, or his weapons directed? Had the accused declined going to the place indicated in the message, what security had he against the recurrence of scenes like those which had been witnessed for days; probably to be repeated, until closed by the death of one, or both of the parties concerned? And who could fail to perceive the advantage which such a course would place in the hands of his adversary, upon whom would be conferred the right to select the time and place of attack, the weapons with which it should be made, and the manner of making it. Under these circumstances, the accused did write and cause to be delivered, the paper which I have read, and which the prosecuting attorney is pleased to consider an *acceptance of a challenge to fight a duel*, with an *engine, instrument, or weapon*, the probable consequence of which might be the death of either party.

This paper was written and caused to be delivered to the deceased, with the hope, that in the reasons assigned against the course proposed, would be found sufficient cause to induce him to change his rash resolve. And in the solemn protest which he entered against it, convincing evidence, that nothing short of the high obligations which both duty and honor imposed, could induce him to go to the place indicated in the message. Yet he determined to go, resolved to avert the threatened consequences if he could—to meet them if he must. He also knew that the parties would be attended by tried friends, and he indulged the hope that some honorable proposition for an adjustment of the difficulty might be submitted, or something occur, to render a resort to extremities unnecessary. Under these influences, the accused did, on the next morning, go to the place designated, armed, it is true; but determined, as his conduct throughout clearly proved, not only to make no improper use of his arms, but only to use them in defence of his own life. The necessity for arming himself, must be apparent to all, since enough has been proved, to satisfy every man, that since the morning of the 21st, it would neither have been prudent or safe for him to have passed beyond his own door, without being armed for his defence; and being necessary, it was proper and lawful to have provided himself with them. If a man has reason to believe that an attempt will be made to rob him on the highway, he may not only arm himself, but lawfully take the life of him who attempts to commit the robbery. And if you may lawfully put to death him who shall feloniously attempt to take from you five dollars, will it be contended that it is unlawful to put him to death, who shall attempt to take away your life? in other words, that you may defend your purse, but shall not be permitted to defend your life! That the accused did make no improper or illegal use of his arms, I now propose to show, by the testimony in the cause.

Very shortly after he arrived upon the ground, Mr. Pleasants was seen approaching the position which he occupied, two hundred yards above the cotton factory on the Manchester side of James River: having been previously advised by Doctor Warner, of the danger of passing near the accused, as he might suppose that an attack was intended, and shoot him; there being no terms of meeting agreed upon. To this admonition of his friend, Mr. Pleasants turned a deaf ear, and passed on, within eight feet of Ritchie, to the place which it appears he had selected (one hundred yards above) to arm himself for the dreadful conflict. Ritchie, with a forbearance that belonged to riper years, permitted him to pass unmolested, without uttering one word, or making any hostile demonstration whatever. Pleasants was quickly followed by an individual with two cases of arms, which were delivered to him in plain view; which having been unlocked, Pleasants proceeded to arm himself, by putting a bowie knife in his bosom, a six barrel revolving pistol in his coat pocket, a sword-cane under his arm, and taking a pair of duelling pistols, one of which he held in each hand. About this time, or very shortly before, Mr.

Deane inquired of Mr. Greenhow, whether Mr. Ritchie would not withdraw the epithet of "coward?" to which Mr. Greenhow replied, that Ritchie would remain upon the ground for fifteen minutes, and no longer. It is obvious that the proposition submitted, could not at that time, and under the circumstances, have been acceded to, without dishonor. What would have been said? Why, that what was now admitted as an act of justice to Pleasants, had been withheld until the last moment, when Ritchie had been forced to withdraw it at the pistol's mouth. Mr. Deane retired to the position occupied by Mr. Pleasants, Mr. Greenhow halting a few paces in advance of it. Very shortly afterwards, Pleasants armed, as has been described, was seen advancing with firm and determined step upon Ritchie. At this moment, Messrs. Archer and Greenhow determined to arrest him, if possible, and both called on Pleasants to stop, in a voice loud enough to be heard at the factory, three hundred yards distant. Pleasants halted, and shook his head in dissent. The call was repeated by both, and also by Deane and Warner; they all continued to call, until they saw the flash of Ritchie's pistol; the parties being at that time about twenty-five or thirty yards distant from each other. Now, suppose this to have been a duel, and according to the forms of duelling: when the friends of the parties called on him to stop, and he refused, I submit to you, whether it did not from that time cease to be a duel, and become a case of common assault? Duels are usually submitted to the management of friends, and the call made by the friend of Ritchie, should have been regarded as made by Ritchie himself, and concurred in as it was, by his own friends, should have been obeyed; having been rejected, he assumed the responsibility, and it should from that time, no longer be regarded as a duel, but a case of common assault; against which, he had a right to defend himself. The first shot failed to take effect, Pleasants still continuing to advance, and Ritchie remaining stationary. When within about fifteen paces of each other, both are seen to fire, very nearly at the same instant, when Pleasants was slightly turned from his course, receiving, as Doctor Warner supposed, the ball from the pistol of his adversary, in the left breast. Pleasants still continued to advance, and Ritchie to maintain his position; when the firing was repeated in very rapid succession; six or seven pistols having been discharged, as the witnesses supposed. From this time, the fight was continued by both, hand to hand, with swords, Pleasants inflicting heavy blows on the head of his adversary, which beat him back almost fifteen feet. Warner testifies, that thrusts with the swords, were several times made by each, at the other; but McGee, another witness, proves, that the only use made by Ritchie of his, was to parry and ward off the blows of his assailant. As soon as the firing ceased, Pleasants was seen to reel, and Messrs. Archer, Greenhow, Warner, and Deane, who were distant about one hundred yards, came as speedily as possibly to their relief. The bloody conflict was ended: and when they reached the parties, they found Ritchie with his sword pointed to the ground, with which he could at a single blow have despatched his adversary, for his life was then at his mercy. That life he spared. And McGee, who witnessed all that occurred, from the commencement to the close, expressed his amazement at such forbearance. But he had then, successfully resisted the attack, his life was no longer in peril, his adversary in his power; and like a brave forbearing man, who had throughout this whole affair employed all fair and honorable means to avert the necessity which now made his action proper, he was unwilling to do more than might be absolutely necessary to save his life; that object accomplished, he was content, and refused again to raise his hand to inflict another blow, even upon him, whose two empty pistols, and bent sword, proves the determined spirit with which the attack was made, and whose hand, shattered by a ball from the pistol of his adversary, accounts satisfactorily for his failure to use his revolver, and possibly for the preservation of the life of the accused. For it is proved by Mr. Redford, that a ball which, from the direction, and the position of the parties, must have been discharged from the pistol of Pleasants, at the first fire, and which is also proved to have been levelled at Ritchie, was plainly heard by him to strike the end of a cooper's shop near which he stood, nine feet from the ground, at the distance of about two hundred yards from the parties, and with sufficient force to split off a small piece of a plank. It was not possible for it to have been discharged from Ritchie's pistol, for at the time, his back was to the witness, and Pleasants in front of him: and an elevation of his pistol one twentieth part of an inch above a horizontal line, would, at the distance of two hundred yards, have given the ball the elevation it had attained, when it reached the cooper's shop.

As to the alleged advantages which the Attorney for the Commonwealth supposes the accused to have had, first from position, secondly in the arms selected, and thirdly in the manner of attack; the deceased having, as he contends, to advance upon him; I shall pass them by, with this single remark, that in this whole arrangement, if arrangement it can be called, the accused had neither part nor lot; it was not of his seeking, but forced upon him; it was not from choice, but necessity; and had the short space of but fifteen minutes been suffered to pass by, he would have retired from the place, the deceased would have been unharmed, and he saved the necessity of performing the most painful act of his life. This he was not permitted to do. If, then, there be blame, let it rest where it should, and where the deceased himself placed it. An effort has also been made to cast upon this transaction

the imputation of unfairness. If the high and respectable characters of the parties concerned did not sufficiently repel the charge, its refutation is to be found not only in the statement of every man who was present, but in that furnished by Mr. Pleasants himself, if indeed his dying declarations are to be relied upon, for at a time when his death was inevitable, when standing on the verge of the grave, doubtless contemplating scenes that were passing beyond that veil that separates between eternity and time; on being informed that there were those who attached blame to these parties, he called to his bed-side his relative and friend, Mr. Albert Pleasants, (requesting all others to leave the room,) and charged him with a message to be delivered to Ritchie, saying that he was a brave fellow, that they were not in fault, but that he, alone, was to blame for all that happened on the ground. Nor is the character of the affair as it has been detailed to you by living witnesses, at all changed by the dying declarations of the deceased, which have been introduced and relied upon in support of the prosecution. These declarations, gentlemen, have been submitted to you as competent evidence, to be considered in connexion with the other testimony; to be weighed by the Jury, and to have such influence, as under all the circumstances, you may think them entitled to. Whether there is any evidence, is a question for the Judge; whether it is sufficient, a question for the Jury. "The Court may decide, upon examination of proofs, that a witness is not incompetent for want of reason or understanding; the Jury may, notwithstanding, determine within their province what is the weight of his testimony, and may graduate the credit they will repose in it, from the point of total disbelief to that of the most implicit confidence."

The admission of dying declarations as compent testimony, is an exception of two well settled principles of the law of evidence: that which rejects all evidence not given under the sanction of a judicial oath, and that which excludes all evidence, where the party against whom it is offered, can have an opportunity to cross-examine the witness.

The dying declarations relied upon in support of the prosecution, are those proved by Dr. Warner to have been made by the deceased on the evening of the 26th of February, in answer to questions propounded by the witness. When asked why his last fire had not killed Ritchie, he replied there was no ball in his pistol; that he had drawn the ball. Warner then inquired why he had not drawn the other balls; to which he replied, "I wanted to hold him jeopardy; I wanted to know that I had him in jeopardy." Warner then enquired to know if he had not on the field intended to kill Ritchie should it become necessary; to this he replied, that he did not wish to kill him, and that he had gone there to show him that he was not a coward. These are the declarations relied upon by the Prosecuting Attorney; declarations made at a time when the deceased was strongly under the influence of stimulants and opiates: and while Warner did not consider him to be in what he termed a *narcotic state*, represents him as being drowsy, and required to be aroused to engage in conversation.

Gentlemen, allow me here to inquire, how are you to reconcile these declarations with those calmly and deliberately made, and several times repeated by him anterior to the 25th, after there had been time offered for mature reflection, with those made on the 25th and subsequent to that day? or with his conduct throughout the affair? On the 21st he said to Vial, he would kill Ritchie, or Ritchie should kill him. On the night of the 22nd, he stated to the witness who proves these declarations, (Dr. Warner,) that he would either have Ritchie's blood, or Ritchie should have his; and on the night of the 24th, again repeated to Warner that he should go to the field to risk his own life, and to take that of his adversary, if he could.

On the 25th of February, and after he had received the mortal wounds, on his return to Richmond, and while at the toll-gate, it is proved by Mr. Irby that he spoke angrily, and complained that his pistols were not half loaded: on the night of the 25th, Mr. Triplett proves he was in the room with Mr. Pleasants when Mr. Archer expressed his surprise that he had not used his revolver; to which he replied, if he had, all would have been well. Dr. Palmer proves that shortly before his death he called to see him, and heard him say that he had made several attempts with his sword, and finding it useless, struck him over the head; that it was a providential thing that Ritchie was not killed; that his pistols were not well loaded, and that they were not loaded by himself; and in answer to a question propounded to him by Warner, enquiring to know how it happened that his sword was bent, stated that he thought he had *run him through twice*. How, I repeat, are these dying declarations to be reconciled with those made before and afterwards, or with his conduct throughout? They cannot be reconciled; for they could not well be more contradictory, and can only be explained by the fact that his mind, if not wandering, was not in that state which enabled him to give a clear and accurate statement either of the facts or of the motives that influenced his conduct; and still less can they be reconciled with his conduct on the ground. There, in plain view of his adversary, he armed himself with a bowie knife, sword-cane, a six barrelled revolver, and two duelling pistols, one of which he held in each hand, and thus armed, advanced upon him, both of which he fired; the ball from one of them striking with much force a shop at the distance of two hundred yards! But it is of little importance whether he intended to take the life of his adversary or not; or whether his pistols were loaded or empty. In view of what had transpired before the day, and of what occurred

upon the ground, the accused was fully justified in all he did. Then, gentlemen, I submit to you upon this testimony, first, whether it is not clear that Ritchie went to Manchester with no intention of making an assault, or doing any unlawful act; secondly, that the relations subsisting between himself and the deceased, were such as to make it both prudent and proper, that he should be at all times armed for the defence of his person; thirdly, that the attack was so violent, and with such dangerous weapons, that his life was in imminent danger; and lastly, that his pistol was not fired, or any other arms used by him, until it was certain that if he did not defend himself death was inevitable; and, if this be so, I then propose to show upon authority that he had a right to take the life of his assailant.

Foster's Crown Law, page 273:—"The writers on the Crown Law, who, I think, have not treated the subject of self-defence with due precision, do not in terms make the distinction I am aiming at, yet all agree that there are cases in which a man may, without retreating, oppose force to force, even to death. This I call justifiable self-defence, they justifiable homicide.

"They likewise agree that there are cases in which the defendant cannot avail himself of the plea of self-defence, without showing that he retreated as far as he could with safety, and then, merely for the preservation of his own life, killed the assailant. This I call self-defence culpable, but through the benignity of the law excusable.

"In the case of justifiable self-defence, the injured party may repel force by force in defence of his person, habitation, or property, against one who manifestly intendeth and endeavoreth by violence or surprise to commit a known felony upon either. In these cases he is not obliged to retreat, but may pursue his adversary till he findeth himself out of danger, and if in a conflict between them, he happeneth to kill, such killing is justifiable.

"The right of self-defence in these cases is founded in the law of nature, and is not, nor can be, superseded by the law of society—for before civil societies were formed, (one may conceive of such a state of things, though it is difficult to fix the period when civil societies were formed.) I say before societies were formed for mutual defence and preservation, the right of self-defence resided in individuals; it could not reside elsewhere; and since in cases of necessity individuals incorporated into society cannot resort for protection to the law of the society, that law with great propriety and strict justice considereth them, as *still in that instance*, under the protection of the law of nature."

1st Hawkins, chapter 28, section 24. "And I can see no reason why a person, who without provocation is assaulted by another in any place whatsoever, in such a manner as plainly shows an intent to murder him, as by discharging a pistol, or pushing at him with a drawn sword, &c., may not justify killing such an assailant as much as if he had attempted to rob him: for is not he, who attempts to murder me, more injurious than he who basely attempts to rob me? and can it be more justifiable to fight for my goods than for my life? And it is not only highly agreeable to reason, that a man in such circumstances may lawfully kill another, but it seems also to be confirmed by the general tenor of our law books, which speaking of homicide *se defendendo*, suppose it done in some quarrel or affray, from whence it seems reasonable to conclude, that were the law judges a man guilty of homicide *se defendendo*, there must be some precedent quarrel in which both parties always are, or at least may justly be supposed to have been in some fault, so that the necessity to which a man is at length reduced to kill another, is in some measure presumed to have been owing to himself; for it cannot be imagined that the law, which is founded on the highest reason, will adjudge a man to forfeit all his goods, and put him to the necessity of purchasing his pardon, without some appearance of a fault," &c.

1st East, 271, 272. "A man may repel force by force in defence of his person, habitation or property, against one who manifestly intends or endeavors by violence or surprise, to commit a known felony, such as murder, rape, robbery, arson, burglary, and the like, upon either. In these cases he is not obliged to retreat, but may pursue his adversary until he has secured himself from all danger; and if he kill him in so doing, it is called justifiable self-defence: as on the other hand, the killing by such blows of any person so lawfully defending himself will be murder."

In 4th Black. page 185, the principle of law is thus laid down. "The party assaulted must therefore flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment; or as far as the fierceness of the assault will permit him: for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm; and then in his defence he may kill his assailant instantly. And this is the doctrine of universal justice, as well as of the municipal law," from which it appears that an assault may be so fierce as not to allow the party assaulted to yield a step without manifest danger of his life, or great *bodily harm;* and then in his defence he may kill his assailant instantly—and this the author informs us is the doctrine of universal justice. Whether the assault upon the accused was of that character, you, gentlemen, have now the means of determining. Chief Justice Parsons in charging the Jury, in the case of Thomas O. Selfridge, (Selfridge's trial, page 6,) says, that "An assault is an attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him, or even by holding up the fist at him in a threatening or insulting manner, or with such other circumstances as denote an intention and ability at the time, of using actual violence

against his person. And when the injury, however small, as spitting in a man's face, or unlawfully touching him in anger, is inflicted, it amounts to a battery which includes an assault."

I will also refer you to the opinion delivered by Justice Parker, in the case of Selfridge. page 160, who was indicted in Boston for killing Charles Austin, and I invite your attention to it, because in many of its features it bears a very striking resemblance to the case at bar.

"First. A man, who, in the lawful pursuit of his business is attacked by another, under circumstances which denote an intention to take away his life, or to do him some enormous bodily harm, may lawfully kill the assailant, provided he use all the means in his power, otherwise, to save his own life or prevent the intended harm—such as retreating as far as he can, or disabling his adversary without killing, if it be in his power.

"Secondly. When the attack upon him is so sudden, fierce and violent, that a retreat would not diminish, but increase his danger, he may instantly kill his adversary without retreating at all.

"Thirdly. When from the nature of the attack, there is reasonable ground to believe that there is a design to destroy his life or commit any felony upon his person, the killing the assailant will be excusable homicide, although it should afterwards appear that no felony was intended.

"Of these three propositions, the last is the only one which will be contested any where; and this will not be doubted by any who are conversant in the principles of criminal law. Indeed, if this last proposition be not true, the preceding ones, however true, and universally admitted, would in most cases be entirely inefficacious. And when it is considered that the Jury who try the cause, are to decide upon the grounds of apprehension, no danger can flow from the example.

"To illustrate this principle, take the following case:—A, in the peaceable pursuit of his affairs, sees B rushing rapidly towards him, with an out-stretched arm, and a pistol in his hand, and using violent menaces against his life as he advances. Having approached near enough, in the same attitude, A, who has a club in his hand, strikes B over the head, before, or at the instant the pistol is discharged, and of the wound B dies. It turns out that the pistol was loaded with *powder only*, and that the real design of B was only to terrify A. Will any reasonable man say that A is more criminal than he would have been if there had been a bullet in the pistol? Those who hold such doctrine, must require, that a man so attacked, must, before he strike the assailant, stop and ascertain how the pistol is loaded; a doctrine which would entirely take away essential right of self-defence. And when it is considered that the jury who try the cause, and not the party killing, are to judge of the reasonable grounds of his apprehension, no danger can be supposed to flow from this principle."

—The case of Selfridge, occurred in Boston in the State of Massachusetts, known as the land of "steady habits," where crime is as promptly punished as in any State of this Union. In that case a man was shot down "on change," where the assault was made with a walking cane, but in the hands of a strong young man; and under the law as laid down and expounded by the judges of the Supreme Court of the State, a jury did not hesitate to pronounce a verdict of "not guilty." And, gentlemen, I confidentially indulge the expectation that you will, without retiring from your box, render the same verdict in this.

I have now shown to you, on authority, that where an assault is made with dangerous weapons, it may be so fierce as not to allow the person assaulted to yield one step without endangering his life, or exposing himself to great bodily harm, in which event he may lawfully take the life of the assailant, and it is but carrying out the principles of that law which we derive from God; the law of nature.

But it has been contended by the prosecuting Attorney, that he who kills another must be free from fault in producing the necessity which led to the act of killing. It is scarcely necessary for me in this case, to call in question the correctness of the position assumed; and yet I might say to the gentlemen, that it is a well settled principle of law, that if on a sudden provocation, A assaults B, and A be driven to the wall, and then kill B in his own defence, this is excusable homicide in A; and it would, I apprehend, be difficult for him, for me, or for any one, to show that A was not in fault by making the assault. I am aware that it is a principle laid down in many books of high authority, but if examined, it will be found that they all refer to Bassett's case, mentioned by Lord Hale. The case was this, A, with many others, had, on pretence of title, forcibly ejected B from his house, and B on the third night returned with several persons, with intent to re-enter; and one of B's friends attempted to fire the house, whereupon one of A's party killed one of B's with a gun; held manslaughter in A, because the entry and holding with force was illegal. This was a case of tresspassers; their fault was that they had ejected a man from his own house, and forcibly held possession against the rightful owner. It was an act for which they were liable to be indicted and punished; and the question might well arise, whether an act of imprudence, or mere indiscretion, would be held to be such a fault as should deprive a man of the right to defend himself when attacked under circumstances calculated to endanger his life. But I need not press this inquiry further, as I am content to rest this question on the testimony of the witnesses, whose statements you have heard, and the admission made by the deceased, that the accused and his friends were not to blame, but he alone in fault for all that happened on the ground. If this be so, malice cannot legally

be inferred, nor has malice been proved by any witness who has been examined in the cause. Then the act was not committed *maliciously*, and consequently does not fall within that provision of the statute which, to make it an offence, requires that it must be "*wilfully and maliciously*" done.

It remains to be considered whether there was an *agreement* between the parties, to *fight a duel or single combat* with an *engine, instrument or weapon*, which might be the death of either party.

If such agreement was entered into, I suppose it is susceptible of proof. Who has proved an agreement to fight such duel or single combat, or to fight at all? No one; and all that has been proved in relation to it is, that a verbal message was on the 24th of February, sent by the deceased to the accused, to which the accused, on the same day, returned an answer in writing; to both of which your attention has been already called, and all the circumstances under which the message was sent, and the reply made to it, have been already so fully examined in the discussion of another branch of the subject, as to render farther comment at this time, unnecessary. The message, it will be recollected, notified the accused that he (Pleasants) would be on the Manchester side of James river, two hundred yards above the cotton factory, the next morning at sunrise, with side arms, and accompanied by two friends; for what purpose is not disclosed, nor could the bearer of the message, or any other person, state the object. He complained of no grievance, made no demand upon the accused for anything. Did the accused accept it as a challenge to fight a duel or single combat? No; but ignorant of the object contemplated by its author, in his reply, informed Mr. Pleasants that he was ready to receive a proper challenge from him; assigned five satisfactory reasons why the terms of the message should not be acceded to, and entered his solemn protest against it. Is this an agreement to fight a duel? In the language of my friend (Mr. Taylor) who has preceded me in this discussion, "it looks very much like binding a man on a Bill of Exchange, who protests the bill when presented to him for acceptance." The agreement must be proved, the law demands it, and I do not understand, that the mere intimation contained in the letter of the accused, that he would, on the next morning, go to the Manchester side of the river, can, on any principle of construction, be fully interpreted to mean that he intended to go to fight a duel or single combat, or to fight at all. But it has been contended that the agreement is to be inferred from the fact, that the accused did go armed to the place mentioned in the message, and at the time indicated. Gentlemen, I have attempted to show you that the relation in which these parties stood to each other, made it both prudent and proper that he should have armed himself, whether he proposed to go to Manchester, to remain in Richmond, or even to pass beyond his own door. It is what, under the circumstances, would have been done by every man who valued his own life, and intended to defend it against assault. That it was possible, as the result proved, that it might become necessary for him to use them in defence of his life, doubtless occurred to him. But I wholly deny that because he did take that precautionary step, it is a legitimate inference to be drawn from that fact, that he who had reasoned against the terms of that message, and entered against them his solemn protest, thereby bound himself by agreement to fight a duel or single combat. And in determining the question, whether such an agreement was in fact entered into, it may not be amiss to ascertain, if it can be done, what was intended by the parties Did they consider it a duel? It has been proved that Mr. Pleasants did not, and that he was pledged not to engage in a duel. That Mr. Ritchie did not so consider it, is clear from the fact that in his note of the 24th, he distinctly informed Mr. Pleasants that if challenged by him, he was ready to accept. Thus clearly negativing the conclusion that he looked upon the message as a challenge to fight a duel. Nor did the friends of the parties so regard it. Mr. Archer stated to you that he did not. And it is also in proof, that when the message was delivered to Mr. Greenhow, he enquired to know what was expected by Mr. Pleasants; and the gentleman who bore it, was unable to inform him. That Dr. Warner concurred in opinion with Messrs. Archer and Greenhow, would seem to follow from the fact, that when on the ground, Mr. Pleasants was about to pass very near Mr. Ritchie, he advised him against it, saying that Ritchie might shoot him, there being no terms agreed on. An agreement to fight a duel, and no terms agreed on? Did such a case ever occur? Could it occur with men of ordinary intelligence? It is certainly not probable, and I should think scarcely possible. What was the opinion entertained by the numerous peace-officers of the city of Richmond, whose duty it was, under the anti-duelling act, having good cause to suspect any person or persons about to be engaged in a duel, to have issued their warrants to bring the parties before them; and to have taken of them recognizance to keep the peace, and that they would not directly or indirectly, be concerned in a duel, within the time limited by the recognizance. Did they regard it as a duel? Their failure to act is conclusive to show that they did not suspect it; and yet the whole affair had been public for days, but little else talked of on the streets, where the people assembled in groups to witness the attack which it was generally believed was intended to be made by the deceased on the accused.

I submit to you, gentlemen, whether upon the law and the testimony the commonwealth has succeeded in proving that the act was done *wilfully* and *maliciously*, or that there was such an *agreement* previously entered into between the parties, to fight a duel or single combat,

engine, instrument, or weapon, which
sult in the death of either party, as to
a duel punishable by the statute. The
is true, was a shocking one, but ren-
evitable by the crisis forced upon the
; and driven, as he was, to that im-
point where degradation and disgrace
ad he failed to have defended both his
nd his life, he would have despised
as he would have been despised by the
le, the just, the virtuous, and the brave.
emen, I have detained you too long,
only add in conclusion, that the life of
ised is in your hands, and at your dis-
here he is content to leave it, and I
t further attempt to portray to you the
ences which must have resulted from
sal to have gone to Manchester on the
of the 25th of February, or his failure
defended himself, when attacked. You
t to figure to yourselves the situation of
man of most respectable family and
ons, just entering on the theatre of life,
his prospects before him; and in a
most likely, of all others, to point
ttention to him, with the brand of cow-
urnt deep upon his forehead, and the
eternal infamy and disgrace attached
ame and to his memory forever. Thus
d, where could he go? Could he re-
that society of which he had recently been a member? The slow-moving finger of scorn would be pointed at him, at every step. Could he, by exiling himself from Virginia—the home of his youth—find some remote corner of the Union, where he might hope to avert the disgrace which must attach to him here? The trumpet-tongues of a thousand presses would herald that disgrace to the world; and there is no place of retreat so secluded, that it would not meet him there. Could he return to the friends of his youth, or to those whose confidence he had secured at maturer age? Friends he would have none. As a last resort, would he return to that aged father and mother, who had watched with tenderness and care, his every step from infancy to manhood, and who at this moment are anxiously looking out to catch, in the passing breeze, the joyful note that the life of their child is spared? That father would say to him, "My son, I have taught you to shrink from dishonor;" and thus he would be thrown, an outcast upon the world—a living monument of his own disgrace and infamy.

To avert this, the heaviest of all calamities that could befall him, he has been driven to the perpetration of a deed that all lament; and the necessity that produced it, no man more deeply deplores than himself. And for his justification, his hopes, gentlemen, are upon you.

The PROSECUTING ATTORNEY next addressed the Jury, closing the case in behalf of the Commonwealth.

He commenced, by referring to the ability, eloquence and pathos, which had been brought to bear in favor of the prisoner; and alluded to the disadvantage of having to reply, on the spur of the occasion, and under such circumstances of fatigue and weariness to all parties, to an argument extending through ten or twelve hours, whereas the other gentlemen, with the exception of the junior counsel, had had the advantage of a night's sleep on his opening argument.

He had, he said, been taken to task—not once only, but several times—for the comment he had made on the proposal to submit the case without argument. It did seem to him to be a case, in which an argument was proper—at least an argument upon the law. When the proposal was made, the law had not even been read to the jury. Were they to jump to a conclusion in the dark? It seemed to him, too, from the peculiar manner in which the proposal was made, implying, as it did, a most flattering compliment to the jury, that it might have made an impression on their minds which it became his duty to endeavor to remove; and that it might possibly have been so designed. It is said there are "arts of able editors," and so there may be arts of able counsel, and policy may sometimes be consulted not only in such matters as this, but even in the selection of the jury. I do not undertake to say it was so, or wrong, if it were so; but it might be so, and I considered it my duty to try to counteract it. I may have been wrong, but after all that has been, if it were to do again, I should probably act in the same manner.

But to proceed with the argument. I shall not detain you long. I have had no opportunity to examine particularly the authorities which have been cited, or to prepare an elaborate reply.

It seems that the defence is so multifarious, and has assumed so many forms, that it is impossible to meet it. It has changed shapes with Proteus; and before one ground of defence could be well understood, it has shifted, and assumed another phase. Do you, gentlemen of the jury, understand the particular point of the defence which has been made for the accused? Was it a duel or not a duel? an acceptance of the challenge, or not an acceptance? Is killing in a duel, murder or not? Is the Act of the Assembly law, or not law?

Much has been said about the misrepresentation in the public journals, and your feelings have been appealed to, on that score. Now, what have you seen in the press about this matter? I have seen the Richmond papers, and I took pride in hearing it said by the counsel on the other side, that the conduct of the Richmond press was worthy of all praise.

It is said, I have abandoned the common law, and rely on the statute. Is this so? No: I referred to, and relied on common law authority. I read the statute, and referred to the common law. What is the statute? (Read from the Act of Assembly.) Attend well to the terms of this act. Is it necessary that the party killing another, should have malice other than that implied in the deliberate act of fighting a duel? I say that nothing is required but fighting by previous agreement with weapons calculated to produce the death of either party. But it is argued before you that this must not only be done, but done with malice. What sort of malice? Here is malice, if he fights a duel. Is any other malice required? Is not the intention of parties going out to fight, mischievous and malicious? The law infers malice, without further proof.

I apprehend, that if two gentlemen were to go out without hostile feelings, and merely to make experiments in shooting at each other, and one were to kill the other, he would be guilty of murder. Where the killing of one is murder, the killing of the other would be equally so, by reason of the unlawful compact. If the killing of Ritchie would have been murder, that of Pleasants must be so likewise. Yet it is argued, that if P. had killed Ritchie, it would have been murder, and that R. was only acting in self-defence. Now, I apprehend, that, being a fight by agreement, no matter which party falls, it is murder.

But, it is said that Ritchie had to defend his reputation; that had he not done so, the slow-moving finger of scorn would have been pointed at him at every step, and his relatives would not have received him. Yet, Pleasants is to be branded as a coward openly, and he is to have no reparation! The slow-moving finger of scorn is to be pointed at him, and he must submit to it, and he must not resent it even in the ordinary way, in a casual meeting, as any plain man would do! He is held up as committing an outrage, because he goes about the street to meet a man who has called him a coward! It is most unpardonable in this man to go to meet the man who has stigmatised him as a coward; but the other may kill him in a deliberate meeting, and it is no murder! I do not defend Mr. Pleasants; but, tender as he was of his reputation, the only legacy he had to leave to his children, did he act unnaturally, in seeking an opportunity to get reparation? If so, why was there a general expectation of a rencontre in the street? Why, if there was not cause given by Ritchie? He did not meet R. I do not say that R. kept out of his way purposely; but P. thought he had reason to suppose so. He went again and again to R.'s place of business. He is almost tauntingly told, "seek Mr. R. in a proper manner, and he may be found." What did this mean? Call him to the field of honor. Was that more proper than the mode he at first contemplated? He did not want R.'s blood. His phraseology is remarkable. He said, in every instance, "Ritchie must have my blood, or I will have his," and that * * *

We are told that Ritchie would have been

disgraced had he not gone out to vindicate his honor. He went there ignorant of the object of the meeting—good easy man! I do not know now whether the counsel intended to argue that it was a duel or not. We are told that it was a rencontre. I ask if any particular form of words is required to constitute a duel, like a magistrate's certificate to a deed? It seems that the form is laid down in Cilley's case, and nothing is a duel that does not correspond with that! I contend that no form is required: substance is the thing. All that is required to constitute a duel, is the agreement to meet with weapons calculated to produce death followed by the meeting. It is not necessary to state what arms are to be used.—We are told about the seconds required in a duel, and it is said there were no seconds in this affair. Now, if two of us were by previous agreement to go out into the field to fight with deadly weapons, and one should take the life of the other, would it not be a duel, whether there were seconds or not? It does seem to me a desperate case, which drives able counsel to such extremities as these.

But the letter of the accused is no acceptance! and if so, it is a strange sort, we are told. It is said that it is not an accepted bill, but a protested draft, and no action could be brought upon such a draft. Let me call your attention to it. The drawee says, I have five reasons why I should not accept your draft, but I will accept and pay the money—but on your head must rest the consequences of drawing. He binds himself. Would any of my friends advise a client, that this was no acceptance? Yes; but Pleasants should have yielded to his reasons. How was he to yield to the reasoning, after the challenge was accepted? Who could have expected him to say, your reasons are convincing, and I submit? Who would have been the disgraced man then? He had been called a coward. They had refused to withdraw the epithet, because Ritchie conscientiously believed him to be a coward. No opportunity is afforded for a casual meeting, and he is driven, in his desperation, to do what I do not justify: the law does not justify it, nor will I. He sends the fatal message. Proposals for reconciliation having been refused in the most galling terms, he takes the last alternative. The gentleman protests, sets forth reasons for not accepting; but says, nevertheless, notwithstanding my objections, "I accept."

Mr Taylor.—Is that said by Mr. Ritchie?

The Pros. Attorney.—He says, "I will be on the ground at the time and place." That was all Pleasants asked, and that by implication only. Is not that an acceptance? How, after the terms are acceded to, is P. to yield? At whom would the slow moving finger of scorn have been then pointed? Who would have been heralded forth as a coward in the many trumpet-tongued press? Mr. Pleasants would have had all the disgrace and Ritchie none.

Mr. Ritchie did not know what was to be done! Then why did he go, girt about with weapons, panoplied in armor? If merely to gratify curiosity, why was a surgeon summoned to attend him, with surgical instruments? Why was he called up out of his bed at a late hour of the night "to go to Manchester in the morning to see a patient for Mr. Ritchie?"—Was all this out of curiosity to see what P. was going to Manchester for?

There is no doubt, I apprehend, but that this is a duel. If there had been no prosecution, would it ever have been called by any other name? Would it have then been said that the parties did not consider it a duel?

I was represented as saying you were not to consider the intention of the parties. I said nothing of the kind. What I said was, that you were not to be governed by their ideas of the law; and if they chose to consider or to say it was no duel, when the law and its ministers adjudged otherwise, you could not take the opinion of the parties in place of the law. You *are* to consider their *intention*, and that intention must be ascertained from the evidence. What was that intention? To meet in deadly combat, to settle by an appeal to arms, the unfortunate controversy between them. All the circumstances show it. Every preparation is for that and nothing else; and as soon as that is accomplished, the parties concerned place themselves beyond the reach of process.

Then if it is a duel, what is the judgment of the law upon it? The law makes it murder. And are you asked to cast that law out of the statute book? Encomiums have been passed upon the people of Chesterfield as the friends of liberty. I trust they are as much the friends of law as of liberty. Without law, no liberty would be preserved. The law must be carried out. It is said that the law is a law against public opinion. I apprehend that it it is one of the wisest laws upon our statute book; but whether it is or not, acting under the law, as its officers and ministers, we are not to set up our wisdom against the wisdom of the law. We are told that this is the first effort at a serious prosecution for its violation. Suppose it were; suppose by the fault of the public authorities, offenders have hitherto escaped, is that to excuse us from doing our duty? But how many cases of duels have occurred in Virginia since the law? As far as I recollect, every case occurring has been prosecuted. Dr. Archer was tried before the court of Powhatan. The case of Graves, of New Kent, was a duel never fought. A proposal was made to drink poison. The indictment was for fighting with knives; but the proof was a proposal to drink poison. We are told that the party was justly acquitted; and yet he was acquitted against the instruction of the court. Now, I apprehend the opinion of the Judge upon the law is of as much authority as that of the jury who acquitted him. In Archer's case, it is said, the prosecution was gotten up by Archer himself. Were there any witness-

es produced in court? Was the party likely to produce witnesses in court to convict himself. I apprehend that no witnesses proved the fact of the duel to the court? As to duels fought out of the State, there is no power to bring the witnesses within the process of our courts.—Besides, who are the witnesses generally?—The seconds, who cannot be made to testify against themselves.

A portion of the argument on the part of the defence gave me much concern. I was alarmed at the tendency of some of the doctrines coming from such a source, and disseminated before so large an assembly. And I cannot but think, the counsel, able and ingenious as they are, have been driven to the use of them, from the want of any more legitimate ground on which to place the defence. You are told, if the parties went out to fight in defence of their *honor*, they are to be commended for so doing. That such a spirit, with the prospect of war before us, is rather to be encouraged, than repressed. Are we to understand, that for every insult, or what may be deemed such, there is to be no mode of redress, except by a resort to the duel; and that the ordinary modes of settling or resenting insults, usual among common men, and such as Pleasants himself first sought, are without the sanction of the first principles of honor? Or if the injured party should be capable, as I trust, may sometimes be the case, to exercise the meekness and forbearance which commands us even to love our enemies, and should think fit to forgive men their injuries, is he to be looked upon as a disgraced man? And when the law is appealed to, which condemns this mode of settlement, are judges and juries to be told, the law is nothing? The prisoner's honor called him to the field, and instead of punishing, you should award him praise? Are doctrines like these to be sanctioned by the verdict of a jury? I trust I shall never stand here when such doctrines are advanced, without lifting my warning voice, feeble as it may be, against them.

And is this the way to "prepare the hearts of the people for war?" Instead of reserving his valor to meet his country's enemies on the tented field, is one citizen to be encouraged to imbrue his hands in the blood of his fellow-citizen, on the most trivial occasions? And are courts of justice, and judges, and juries, to foster the evil passions and affections of envy, hatred, malice, and all uncharitableness, amongst our own citizens?

But public opinion is appealed to, and my learned friend, one of the counsel, has mentioned, that in all his conversations, he had heard no man, and but one woman, condemn the conduct of the prisoner, since the publication of what is called his protest. I might, on the other hand, mention what I may have heard, but if altogether proper, it is wholly immaterial. Beware, gentlemen of the jury, how you suffer considerations of this sort to influence your verdict. When judges and juries shall be found swerving from their duty under the law, and sheltering themselves under public prejudice and popular clamor, we may well tremble for the consequences. The same public opinion which may in one instance demand of the jury the acquittal of the guilty, may in another, call upon them to convict the innocent, and bring upon their heads the awful responsibility of shedding innocent blood. It was the public opinion of Paris, in the revolutionary era, which, under the forms of law, made the streets flow with blood, and dyed even the waters of the Seine. It was the public opinion of Jerusalem, which condemned the Innocent One to suffer death upon the cross. I trust never to see such a "reign of terror" established in this beloved country.

But great men have fought duels, and have been none the less esteemed. True: but great men are but men, and often do wrong. If there are "fears of the brave," there are also "follies of the wise;" and there is scarcely a more fruitful source of mischief, than the disposition to imitate the follies, the errors, and even the crimes of the great. To those who have rendered essential services to the country, much, perhaps too much, is sometimes forgiven. These men, doubtless, afterwards, themselves repented of these acts, and regarded them as errors. And instead of encouraging the young men of our country to follow these examples, they might be directed to the example of a distinguished and gallant British officer, whose reply, on receiving a challenge from a brother officer, was to this effect: "I am not afraid of your sword, but I am afraid of my God. I am not afraid to risk my life in defence of my country, but I am afraid to commit murder by taking yours."

We are told the accused acted purely in self-defence; and authorities have been cited to prove it; but none of them were duels or mutual combats upon a previous agreement. If the prisoner's life was in danger, he had put it in danger, of his own will. Had he not refused all terms of reconciliation? Had he not said in substance, you must settle this matter by battle, and in no other mode? Was Mr. Ritchie carried there by force? Was he impressed, like the Irish volunteer? or did he go of his own accord?

But it has been said, that at a certain point, the affair ceased to be a duel. What was that point? The seconds had taken their positions, Pleasants was advancing, and no propositions were listened to. It may have been that they believed it possible that the man, denounced as a coward, was in truth a coward, and would not act, when it came to the pinch; and then, and not until then, he was called on to stop, by the authorized friend of Mr. Ritchie.

Mr. Taylor.—And by Archer, and Warner, and Deane.

Prosecuting Attorney. Yes: but the proposition had not been listened to before. You must go to the grave with the brand of cowardice upon you, was said, until it was seen Mr.

Pleasants would fight. Now, we listen to you, but as long as there was an opportunity to bluff you off, we would not listen. Then, the cry of stop, stop, was given, which is now so much relied on. Was it strange that P. considered it then too late?

It is said, however, that Ritchie had it in his power to despatch P. on the ground. Now, it is not pretended that Ritchie intended to kill P., except in a fair duel. He did not assassinate him before, he did not shoot him after the affair; it is not certain he was then able to despatch him; whether able or not, he had already taken his life. One of the witnesses, the most accurate of any who have been examined, says that both parties were too much exhausted to continue the combat. All ran up. Mr. Ritchie knew he was in no danger. The testimony of Dr. Warner, makes it doubtful whether Mr. Ritchie was then able to inflict further blows. The powder from Mr. P.'s pistol burnt his face, and he may have supposed himself wounded. Even Dr. Brown, says he was exhausted. He was running, but with feeble steps, and was helped into the carriage by Dr. B. There, he is examined, at his own request, to see what wounds are on him, not only his body, but his legs. Mr. Bowles thought him dangerously wounded.

But P., in his dying moments, (with a generosity that is almost unparalleled,) said that blame was to be attached to no one but himself. Can he, by taking the blame on himself, release the other party from the penalties of the law? Suppose, however, he was to blame, it makes no difference—the party killing, is guilty. What did Mr. P. mean? He wanted to relieve the feelings of the party. He could do justice to the man, by whose hand he had fallen. He said he was a "brave fellow." He said this of a man who had not only denounced him as a coward, but had taken his life.

But we are told that Mr. P's pistols were loaded. It is immaterial whether the pistol was loaded or not. R. had cause to believe it was loaded. But it is said, if he did not go to take R's life, what did he go for? He went to show that he was not afraid to peril his life. His main purpose was, to repel the charge of cowardice against himself. As to taking the life of his adversary, his purpose may not have been settled. He wanted to wipe off from his escutcheon, the imputation which had been put upon it. A man of his sensitive feelings, I am far from supposing, it would have been better for him to have been the survivor. Had he taken the life of his adversary, it might have brought him down, in misery, to his grave. Hence, he may have vacillated on the field, about taking the life of his adversary. There may have been a change in his mind, from what occurred on the ground, and he may have been influenced by the fact, that another person was behind the tree, prompting R. when to shoot, and giving aid, by his counsel. He may have supposed at the time, there was a plot to assassinate him.

Mr. Stevenson.—He acquitted all of blame.

The Prosecuting Attorney.—So he did, afterwards. I was saying there was something on his mind to change his intentions. It seems there was a mystery about the fire of the second pistol; even Mr. R. thought so. It is said, however, that this law has never been enforced from Maine to Florida, and that if there had been a case, my industry would have brought it out. Now, it happens that my library, as my means, is limited. I have not consulted the public library of the State, and my friend gives me credit for more industry than I have. I do not trim the midnight lamp. I rather deserve censure for not doing it. I have had no opportunity to consult books; but even while the gentleman was speaking, I found in a note to 1 Russell, 528, a reference to the case of Smith vs. State, 1 Yerger 228, to which I call his attention. This was a case not in New England, but in South Carolina, the boasted land of chivalry; and, even there, the doctrine was sustained, and the law enforced.

Gentlemen of the Jury, I am not in a condition to go further. I ask you to take the case and decide it upon the law and the evidence. Consider the message, the answer, the protest, and the arrangements; the failure to give atonement, and the refusal to withdraw the opprobrious epithet; and if you say it was not a duel but a rencontre, say so; I have endeavored to do my duty and shall be satisfied. What satisfies you shall satisfy me. I trust that your verdict will be honest. If in favor of life, God forbid that such a verdict should ever give me pain!

If you consider him innocent, restore him to the distinguished and influential family of which he is a member; and to his parents now descending in the vale of life, who, from all I have ever heard of them, are entitled to the fullest measure of filial reverence and support from all their children. But if you consider him guilty under the law, the sentence which follows is not your own, but that of the law; and however painful, the path of duty must be followed.

The argument on both sides having been concluded, the Jury took the case and, without leaving their box, returned a verdict of "Not Guilty."

The verdict was received by the large auditory present with loud manifestations of applause. Order was, however, promptly commanded by the officers of the Court, and soon restored.

Mr. Ritchie then left the Court House, accompanied by the greater portion of the spectators, who seemed eager to shake hands with him, and congratulate him upon his honorable acquittal.

APPENDIX.

As soon as the case of Mr. Ritchie had been disposed of, Messrs. Peter Jefferson Archer, William Scott, and Washington Greenhow, were brought into Court. The privilege of an Examining Court had been previously waived by Mr. Archer, and the same privilege was now waived by Messrs. Scott and Greenhow; they therefore stood before the Court under indictment, charging them as principals in the second degree, with the murder of John Hampden Pleasants.

A motion was made by counsel, that the Prosecuting Attorney be directed to enter a *nolle prosequi* in their several cases. Messrs. Samuel Taylor, Holden Rhodes, James Lyons, J. W. Jones, and Andrew Stevenson, made statements to the Court in that behalf. The Prosecuting Attorney intimated his intention to be governed entirely by the advice of the Court.

Whereupon, the Court delivered its opinion, of which the following copy has been since prepared by his honor, the Judge.

In the Circuit Superior Court of Chesterfield.

The Commonwealth,

vs.

Washington Greenhow, William Scott, and Peter J. Archer.

By the Court:—

These parties have voluntarily surrendered themselves for trial; they stand indicted as principals in the second degree; the offence which they have committed, if any, is accessorial only in its nature; the principal in the first degree has been tried, and, upon a full and fair investigation, has been acquitted by the appropriate tribunal; the even and proper administration of justice can find no vindication in inflicting punishment on the principal in the second after the acquittal of the principal in the first degree. It is true that the principal in the second degree may *legally* be punished without the conviction of the principal in the first degree, in cases where the principal in the first degree has died or eluded justice by flight, and his guilt shall clearly appear upon the trial of the principal in the second degree, and in cases where the evidence may establish the guilt of the principal in the second degree independently of that of the principal in the first degree. Upon the trial of the principal in the first degree, just had before me, I have heard the whole evidence applicable to the case of these defendants, and it does not prove anything tending to cast the shadow of a suspicion, that they have done an act which would make a prosecution against them as accessories, either required for, or permitted by, the purposes of justice. A *nolle prosequi* must be entered, and the defendants discharged.

The above contains the substance of what I said on directing the prosecution against the defendants to be dismissed.

(Signed,) John B. Clopton.

The parties then retired, and the Court adjourned.

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